

FLORIDA PUBLIC SERVICE COMMISSION

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MEMORANDUM

November 18, 1994

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS [REITH, BROWN, CHASE, DREW, *RL*, *AD*, *JD*]
5/26 GREER, MARSH, MORTON] *RL*
DIVISION OF LEGAL SERVICES [CANZANO] *RL*

RE : DOCKET NO. ~~921074-97~~, PETITION FOR EXPANDED INTERCONNECTION FOR ALTERNATE ACCESS VENDORS WITHIN LOCAL EXCHANGE COMPANY CENTRAL OFFICES BY INTERMEDIA COMMUNICATIONS OF FLORIDA, INC.

DOCKET NO. 930955-TL, REQUEST FOR APPROVAL OF TARIFF FILING TO RESTRUCTURE SWITCHED ACCESS LOCAL TRANSPORT BY BELLSOUTH TELECOMMUNICATIONS INC. D/B/A SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY (T-93-552 FILED 9/15/93)

DOCKET NO. 940014-TL, REQUEST FOR APPROVAL OF TARIFF FILING TO RESTRUCTURE LOCAL TRANSPORT ELEMENT OF SWITCHED ACCESS SERVICE BY UNITED TELEPHONE COMPANY OF FLORIDA (T-93-728 FILED 12/17/93)

DOCKET NO. 940020-TL, REQUEST FOR APPROVAL OF TARIFF FILING TO RESTRUCTURE LOCAL TRANSPORT ELEMENT OF SWITCHED ACCESS SERVICES BY CENTRAL TELEPHONE COMPANY OF FLORIDA (T-93-727 FILED 12/17/93)

DOCKET NO. 931196-TL, REQUEST FOR APPROVAL OF TARIFF FILING TO PROVIDE SWITCHED LOCAL CHANNEL RATE ELEMENTS FOR INTEREXCHANGE COMPANIES AND END USERS WHO HAVE REQUESTED INTERSTATE SWITCHED ACCESS COLLOCATION BY BELLSOUTH TELECOMMUNICATIONS INC. D/B/A SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY (T-93-552 FILED 9/15/93)

DOCKET NO. 940190-TL, REQUEST FOR APPROVAL OF TARIFF FILING TO RESTRUCTURE LOCAL TRANSPORT BY GTE FLORIDA INCORPORATED (T-94-090 FILED 2/16/94)

AGENDA: NOVEMBER 30, 1994 - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

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TABLE OF CONTENTS

	<u>PAGE</u>
<u>LIST OF ACRONYMS USED</u>	6
<u>EXECUTIVE SUMMARY</u>	7
<u>CASE BACKGROUND-EXPANDED INTERCONNECTION</u>	9
<u>STIPULATED</u>	
<u>ISSUE 1:</u> How is switched access provisioned and priced today? [DREW]	16
<u>STIPULATED</u>	
<u>ISSUE 2:</u> How is local transport structured and priced today? [DREW]	17
<u>ISSUE 3:</u> Under what circumstances should the commission impose the same or different forms and conditions of expanded interconnection than the F.C.C.? [DREW]	18
<u>ISSUE 4:</u> Is expanded interconnection for switched access in the public interest? (The following should be discussed within this issue: Potential separations impact; Potential revenue impact on LECs, their ratepayers, and potential competitors; Potential ratepayer impact.) [DREW, MARSH]	24
<u>ISSUE 5:</u> Is the offering of dedicated and switched services between non-affiliated entities by non-LECs in the public interest? [DREW]	34
<u>ISSUE 6:</u> Does Chapter 364 Florida Statutes allow the Commission to require expanded interconnection for switched access? [CANEANO]	39

<u>ISSUE 7:</u>	Does a physical collocation mandate raise federal or state constitutional questions about the taking or confiscation of LEC property? [CANEANO]	49
<u>ISSUE 8:</u>	Should the Commission require physical and/or virtual collocation for switched access expanded interconnection? [REITH]	55
<u>STIPULATED ISSUE 9:</u>	Which LECs should provide switched access expanded interconnection? [REITH]	61
<u>STIPULATED ISSUE 10:</u>	From what LEC facilities should expanded interconnection for switched access be offered? Should expanded interconnection for switched access be required from all such facilities? [GREER]	62
<u>STIPULATED ISSUE 11:</u>	Which entities should be allowed expanded interconnection for switched access? [REITH]	63
<u>ISSUE 12:</u>	Should collocators be required to allow LECs and other parties to interconnect with their networks? [REITH]	64
<u>STIPULATED ISSUE 13:</u>	Should the Commission allow switched access expanded interconnection for non-fiber optic technology? [REITH]	68
<u>ISSUE 14:</u>	Should all switched access transport providers be required to file tariffs? [CHASE]	69

<u>ISSUE 17:</u>	Should the LECs' proposed intrastate switched access interconnection tariffs be approved? [CHASE]	76
<u>ISSUE 18:</u>	Should the LECs be granted additional pricing flexibility? If so, what should it be? [MARSH]	82
<u>ISSUE 15:</u>	Should the proposed LEC flexible pricing plans for private line and special access services be approved? [CHASE]	95
<u>ISSUE 16:</u>	Should the LECs' proposed intrastate private line and special access expanded interconnection tariffs be approved? [CHASE]	99
<u>ISSUE 23A:</u>	Should the Commission modify the Phase I Order in light the decision by the United States Court of Appeals for the District of Columbia Circuit? [CHASE]	104
<u>CASE BACKGROUND-LOCAL TRANSPORT</u>		107
<u>ISSUE 19:</u>	Should the Commission modify its pricing and rate structure regarding switched access transport service? a) With the implementation of switched expanded interconnection. b) Without the implementation of switched expanded interconnection. [NORTON]	112
<u>ISSUE 20:</u>	If the Commission changes its policy on the pricing and rate structure of switched transport service, which of the following should the new policy be based on:	

- a) The intrastate pricing and rate structure of local transport should mirror each LEC's interstate filing, respectively.
- b) The intrastate pricing and rate structure of local transport should be determined by competitive conditions in the transport market.
- c) The intrastate pricing and rate structure of local transport should reflect the underlying cost based structure.
- d) The intrastate pricing and rate structure of local transport should reflect other methods. [NORTON]

116

ISSUE 21:

Should the LECs proposed local transport restructure tariffs be approved? If not, what changes should be made to the tariffs? [NORTON]

129

ISSUE 22:

Should the Modified Access Based Compensation (MABC) agreement be modified to incorporate a revised transport structure (if local transport restructure is adopted) for intraLATA toll traffic between LECs? [NORTON]

147

ISSUE 23:

How should the Commission's imputation guidelines be modified to reflect a revised transport structure (if local transport restructure is adopted)? [NORTON]

151

ISSUE 24:

Should these dockets be closed? [REITH]

157

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

LIST OF ACRONYMS USED IN RECOMMENDATION

ATT-C	AT&T Communications of the Southern States
AAV	Alternative Access Vendor
BR	Brief
CPE	Customer Premises Equipment
CSA	Contract Service Arrangements
EXH	Exhibit
FCC	Federal Communication Commission
FCTA	Florida Cable Television Association
FIXCA	Florida Interexchange Carriers Association
FPSC	Florida Public Service Commission
GTEFL	GTE Florida Incorporated
ICI	Intermedia Communications of Florida, Inc.
IXC	Intarexchange Carrier
LEC	Local exchange company
OPC	Office of Public Counsel
POP	Point-of-Presence
SBT	Southern Bell Telephone Company
Sprint	Sprint Communications Company Limited Partnership
TR	Transcript

EXECUTIVE SUMMARY

The Commission, on August 22-24, 1994, heard testimony regarding issues related to switched access transport expanded interconnection. This recommendation addresses those issues. Issues 1 through 14, 17 and 18 address switched access transport expanded interconnection, Issues 15, 16 and 23A address private line and special access expanded interconnection implementation issues and Issues 19 through 23 deal with switched access Local Transport restructure.

Staff recommends that the Commission find expanded interconnection for switched access transport service to be in the public interest. As in phase I, all the parties to this proceeding, in principle, agreed that expanded interconnection will facilitate competition in the switched access transport market. Competition in this market should benefit end users through increased customer choice, introduction of new services and technologies, price competition, diversification and network redundancy, private investment in the Florida infrastructure, increased service and quality, and greater responsiveness to end user needs.

As in phase I, the major LECs contend that expanded interconnection is in the public interest only if LECs are granted the option to offer physical or virtual collocation, and if LECs are granted pricing flexibility. However, staff does not believe that the Commission must grant the LECs' proposals in order to find expanded interconnection in the public interest. Staff recommends that the Commission require virtual collocation under tariff, to all interconnectors upon request. However, staff recommends that LECs be exempted from this requirement in offices where they opt to provide physical collocation. This policy is consistent with the revised interconnection policy recently adopted by the FCC in its interstate expanded interconnection proceeding. Further, staff recommends pricing flexibility for the LECs for switched access transport. In phase I, the Commission endorsed the "zone pricing" concept adopted by the FCC in its interstate proceeding. We again recommend that the LECs be granted additional pricing flexibility. The LECs should file zone pricing plans for switched local transport consistent with phase I and with those filed with the FCC.

Staff also acknowledges that Chapter 364 Florida Statutes does not prohibit expanded interconnection for switched access. However, there are certain prohibitions as to the extent which expanded interconnection for switched access transport can be

implemented. Pursuant to the statutory provisions of Sections 364.335(3) and 364.337, Florida Statutes, AAVs are prohibited from providing switched access to IXCs.

As with phase I, in order to implement expanded interconnection for switched access transport services, staff recommends that only Tier 1 LECs be required to file tariffs necessary for the provisioning of intrastate expanded interconnection. Staff recommends that these tariffs, at a minimum, mirror the tariffs filed at the interstate level for expanded interconnection. Generally, the tariffs should include: 1) the cross-connect element; 2) charges for central office floor space; 3) labor and material for initial preparation of space for physical interconnection; 4) labor and materials for installation, repair, and maintenance of equipment dedicated to virtual collocators; and 5) charges for power, environmental conditioning, riser and conduit space. Further, staff recommends that the Commission require non-Tier 1 LECs that receive a bona fide request for interconnection to try and negotiate an agreement to provide expanded interconnection. If the parties are unable to reach an agreement, then the Commission should review such requests on a case-by-case basis. This position is different from the policy adopted by the FCC, which simply determined that non-Tier 1 LECs should not be required to provide expanded interconnection.

With respect to phase I items that were to be dealt with in this proceeding, staff is in general recommending that these issues be deferred until the reconsideration in phase I is complete.

In connection with its recommendation to authorize expanded interconnection for the purpose of allowing switched access competition, staff recommends that the Commission restructure the rate design for switched access Local Transport. This will facilitate the LECs ability to compete in this market. We recommend approval of the rate structure proposed by the LECs and adopted by the FCC. However, we recommend that the LECs' rate levels be revised and refiled along with cost and other supporting data.

Finally, staff recommends that the Commission modify the phase I order in light of the decision by the United States Court of Appeals for the District of Columbia. We believe the order should be modified to reflect the decisions made today in phase II.

CASE BACKGROUND - EXPANDED INTERCONNECTION

On October 16, 1992, Intermedia Communications of Florida, Inc. (ICI), a certificated Alternative Access Vendor who provides access services throughout the State of Florida, filed a Petition before the Florida Public Service Commission (FPSC). ICI's Petition specifically requested the Commission to issue an order mandating that local exchange carriers (LECs) file tariff revisions necessary to allow Alternative Access Vendors (AAVs) to provide authorized intrastate services through physical collocation arrangements that will be established within LEC central offices.

Through its Petition, ICI seeks that LECs be mandated to establish tariff rates, terms and conditions necessary to permit certificated AAVs to use these physically collocated facilities to provide intrastate private line and special access services authorized in the AAV certificates. It is ICI's position that such a mandate would be consistent with established Commission policies and would yield substantial and immediate benefits to the public.

By Order No. 24877, issued August 2, 1991, the FPSC has already determined that competition in the interexchange and intraexchange private line and special access markets by AAVs is in the public interest (petitions for reconsideration and the order have not yet been resolved). The purpose of this docket is to determine whether the Commission should take additional steps to introduce a greater level of competition in these markets.

Currently, the degree of competition and the ability to encourage competition in these markets by the Commission is constrained by the Florida Statutes. By Order No. 24877, the Commission found that Section 364.337, Florida Statutes limits the Commission's authority to permit AAVs to provide private line services, both intraexchange and interexchange, only between affiliated entities. Further, the Commission found that the limitation between affiliated entities extends to any part of a private line (point-to-point) service in which an IXC provides a part. An AAV may provide special access which connects an IXC switch and have it terminate to an end user. However, if an AAV provides special access which is part of an end to end dedicated service, the service may only be provided between an end user and its affiliates. Regardless of the Commission's decision in this docket, competition will be limited unless the Florida Legislature removes the affiliated entity restrictions in Section 364.337.

INITIAL FCC DECISIONS

ICI's Petition was initiated at least partly as a result of the FCC's recent decisions in Docket No. 91-141 regarding expanded interconnection with LEC facilities. Docket 91-141 was initiated following a Petition filed on November 14, 1989 by Metropolitan Fiber Systems, Inc. (MFS) which sought to have the FCC establish rules under section 201(a) of the Communications Act governing "the physical interconnection of facilities for competitive carriers providing local access services" in the interexchange market.

Through its Petition, MFS requested that the FCC mandate expanded interconnection to the Bell Operating Companies' (BOCs) networks through physical or virtual collocation. Expanded interconnection, under a physical or virtual collocation arrangement, enables an AAV to interconnect its network with the LEC's network, thus providing an AAV the opportunity to provide service to any customer located on the ubiquitous LEC network without extending its own network.

Over the past several years the FCC has embarked on a more active philosophy to promote competition in all sectors of the telecommunications marketplace. The FCC viewed MFS's Petition as an opportunity to remove barriers that currently impede development of greater competition in the provision of interstate access transmission facilities. It is the FCC's belief that removing these barriers will bring substantial benefits to the interstate telecommunications market.

On October 19, 1992, the FCC released its Report and Order and Further Notice of Proposed Rulemaking in Docket 91-141. In its Order, the FCC states that it believes increased competition through expanded interconnection for special access services will produce similar benefits to those that have been achieved from competition in the customer premises equipment (CPE) market and interexchange (IXC) market for residential and business customers.

Further, the FCC concluded that growth in competition through expanded interconnection should: 1) increase LEC incentives for efficiency and encourage LECs to deploy new technologies enabling new service offerings; 2) make LECs more responsive to customer needs; 3) expand customer choice, especially for those customers who value redundancy and route diversity; and 4) increase competition which will tend to

decrease prices for services provided by both LECs and alternatives.

In its Order, the FCC mandated that all Tier 1 LECs (those with revenues of over \$100 million annually) offer expanded interconnection through physical collocation arrangements to all interested parties in most cases. This requirement allows competitive access providers (CAPs - Florida refers to CAPs as AAVs) and high volume users to terminate their own special access transmission facilities at the LEC central offices. Although LECs are mandated to provide physical collocation to all interconnectors that request it, LECs and interconnectors are free to negotiate virtual collocation arrangements if both parties prefer such an arrangement over physical collocation.

In order to further stimulate competition through expanded interconnection, the FCC also granted LECs additional pricing flexibility for special access services. The FCC concluded that as the provision of special access becomes more competitive, market pressures should force prices toward their economic cost. The FCC noted that under price caps, LECs do have a certain degree of pricing flexibility. However, the Part 69 rules require rate averaging at the study area level which can prohibit the LECs from effectively competing with its competitors. Because LEC competitors generally target areas where the economic costs are below the LEC's average costs, such as high density areas, the FCC determined it would be appropriate to allow LECs greater pricing flexibility to reflect density-related cost differences. The FCC believes that too many constraints on LEC access pricing will limit the benefits of competition and provide false economic signals to new entrants.

Another significant decision in Docket 91-141 was the FCC decision on the concept of a "fresh look" approach. The FCC ordered that customers with LEC special access services with terms equal to or greater than three years, entered into on or before September 17, 1992 (the date of the original expanded interconnection order), be permitted to switch to competitive alternatives during the 90 day period after expanded interconnection arrangements are available in a given CO. If an end user chooses to switch to a competitor, termination charges to the LEC contract would be limited to the additional charges that the customer would have paid for a contract covering the term actually used, plus the prime rate of interest.

PHYSICAL COLLOCATION VERSUS VIRTUAL COLLOCATION

To completely understand the issue of collocation, one must appreciate the differences between physical collocation and virtual collocation. The FCC defines physical collocation as an offering that enables an interconnector to locate its own transmission equipment in a segregated portion of a LEC central office. The interconnector pays a charge to the LEC for the use of that central office space, and may enter the central office to install, maintain, and repair the collocated equipment. (FCC Report & Order, Released 7/25/94, para 7)

Virtual collocation is an offering in which the LEC owns (or leases) and exercises exclusive hands-on control over the transmission equipment, located in the central office, that terminates the interconnector's circuits. The LEC dedicates this equipment to the exclusive use of the interconnector and provides installation, maintenance, and repair services on a non-discriminatory basis. The interconnector has the right to designate its choice of central office equipment, and to monitor and control the equipment remotely. (Monitoring and control is the ability to track, reconfigure, and supervise the operation of communication circuits terminating in such equipment from a remote location). The LEC connects this equipment to the interconnector's circuit outside the central office, with an interconnection point between the LEC-owned facilities and interconnector-owned facilities as close as possible to the office. (FCC Report & Order, Released 7/25/94, para 7)

Therefore, the major difference between these two is who owns the equipment. With physical collocation the AAV owns the equipment and with virtual collocation the LEC owns the equipment and leases the equipment to the AAV. Collocators would prefer physical collocation so that they may have complete control over their networks. If the LECs have a preference it would be virtual, in that they continue to own the equipment and maintain a larger degree of control than with physical collocation.

PHASE I

In a hearing held on September 13 and 14, 1993, the Florida Commission addressed the private line and special access expanded interconnection issues (phase I). This Commission, in phase I of this docket, decided that expanded interconnection for private line and special access service is in the public interest. In principle, all the parties to this proceeding agreed that expanded interconnection would facilitate competition in the

private line and special access markets. Competition in these markets should benefit end users through increased customer choice, introduction of new services and technologies, price competition, diversification and network redundancy, private investment in the Florida infrastructure, increased service and quality, and greater responsiveness to end user needs.

The Commission mandated physical collocation under tariff, to all interconnectors upon request for the purpose of installing, maintaining and repairing terminating equipment and multiplexers associated with the provisioning of private line and special access services. The Commission, however, allowed the parties to negotiate virtual collocation arrangements if an interconnector prefers virtual collocation over physical collocation. This policy is consistent with the initial interconnection policy adopted by the FCC in its interstate expanded interconnection proceeding (the change in the FCC's policy will be discussed later). Further, the Commission endorsed the "zone pricing" concept adopted by the FCC in its interstate proceeding. The Commission required the LECs to submit "zone pricing" proposals which the staff would evaluate and bring back to the Commission for consideration in phase II.

The FPSC also found that mandating physical collocation does not represent a constitutional taking of LEC property.

The FPSC required only Tier 1 LECs to file tariffs necessary for the provisioning of intrastate expanded interconnection for private line and special access services. The tariffs, at a minimum, must mirror the tariffs filed at the interstate level for expanded interconnection. Generally, the tariffs were to include: 1) the cross-connect element; 2) charges for central office floor space; 3) labor and material for initial preparation of space for physical interconnection; 4) labor and materials for installation, repair, and maintenance of equipment dedicated to virtual collocators; and 5) charges for power, environmental conditioning, riser and conduit space.

Further, the FPSC required non-Tier 1 LECs that receive a bona fide request for interconnection to try and negotiate an agreement to provide expanded interconnection. If the parties are unable to reach an agreement, then the FPSC would review such requests on a case-by-case basis. This is different from the policy adopted by the FCC, where it simply determined that non-Tier 1 LECs should not be required to provide expanded interconnection.

Additionally, the FPSC approved the allocation of floor space for physical collocation on a first come, first serve basis, permitted private line and special access customers to terminate most existing contracts with minimal liability (fresh look), extended expanded interconnection to the DSO level, and allowed expanded interconnection of non-fiber optic technology.

Finally, with respect to ICI's Petition, the FPSC decided to treat ICI no differently than any other AAV. The order on Phase I was issued on March 10, 1994. The parties have filed numerous motions for reconsideration and responses to those motions regarding decisions made in phase I.

ACTIONS SINCE FLORIDA'S PHASE I

After the initial FCC orders mandating physical collocation, GTE, BellSouth, United States Telephone Association and other BOCs filed a Joint Petition for Stay of the FCC Order before the United States Court of Appeals for the District of Columbia Circuit. In the Joint Petition for Stay, they argued that the FCC's mandate for physical collocation on LECs constitutes a taking of property and that the FCC had failed to justify its reversal of previous policy decisions on physical collocation.

On June 10, 1994 the United States Court of Appeals for the District of Columbia stated it would vacate in part, and otherwise remand, the first two FCC orders on expanded interconnection, on the grounds that the agency lacked the authority to require the LECs to provide expanded interconnection for special access through physical collocation.

On June 21, 1994, the FPSC, on its own motion, stayed its phase I order and held in abeyance all outstanding motions until phase II is resolved. This was in part due to actions in the federal arena. The FPSC determined that additional time and information was needed before a final disposition of phase I was put forth.

On July 14, 1994 the FCC in order FCC 94-190, reaffirmed its commitment to its expanded interconnection policy. However, the FCC modified its policy and ordered the LECs to provide expanded interconnection through virtual collocation.

The FCC concluded that physical collocation would be the optimal means to achieve the public interest benefits of collocation but believed that virtual collocation would also produce these benefits. The FCC found that it had the legal

DOCKET NO. 921074-TF
NOVEMBER 18, 1994

authority to require virtual collocation. The FCC exempted LECs from the mandatory virtual collocation requirement at central offices in which they choose to offer physical collocation.

The FCC in order FCC 93-379, issued August 3, 1993, required expanded interconnection for switched transport services. The FCC adopted the same policies and regulations it applied to special access services.

Although ICI specifically sought authority to provide expanded interconnection for private line and special access services per the FCC decisions, staff initiated a second phase in this docket to address whether interconnectors should be granted authority to provide expanded interconnection for switched transport services, as well. The phase II hearing was held on August 22-24, 1994. This recommendation will address specifically issues related to expanded interconnection for switched transport services.

DISCUSSION OF ISSUES

ISSUE 1: How is switched access provisioned and priced today?

Approved Stipulation:

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

STAFF ANALYSIS: This stipulation was approved at the August 22, 1994 hearing. (TR 17) Therefore, this issue is resolved.

DOCKET NO. 921074-TF
NOVEMBER 18, 1994

ISSUE 2: How is local transport structured and priced today?

Approved Stipulation:

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

STAFF ANALYSIS: This stipulation was approved at the August 22, 1994 hearing. (TR 17) Therefore, this issue is resolved.

ISSUE 3: Under what circumstances should the Commission impose the same or different forms and conditions of expanded interconnection than the FCC?

RECOMMENDATION: The FCC appears to grant state commissions broad latitude in defining the circumstances under which one form of collocation is established over another. Based on testimony in the record, staff believes that if virtual collocation is mandated, LECs should be exempt from virtual collocation requirements if they opt for providing physical collocation. If physical collocation is mandated by the Commission, however, LECs should be exempted from the requirements for physical collocation if allocated space is exhausted and the LEC agrees to provide virtual collocation. [DREW]

POSITION OF PARTIES

INTERMEDIA: For efficiency, the Commission should not establish conditions that differ greatly from those imposed by the FCC on most aspects of collocation. Therefore, with the exception of pricing flexibility, Intermedia recommends that the Commission adopt the same forms and conditions as those dictated by the FCC.

ALLTEL: No position.

ATT-C: Recognizing the FCC action of July 14, 1994 (modifying its previous orders regarding collocation), ATT-C is not aware of any circumstances that should cause this Commission to prescribe different forms or conditions of expanded interconnection than the FCC.

FCTA: If physical collocation is not mandated, the Commission should essentially mirror the forms and conditions of expanded interconnection established by the FCC. Incumbent LECs should be granted no pricing flexibility beyond that provided by the FCC.

GTEFL: Regardless of what the FCC does, this Commission should adopt an interconnection policy that is constitutionally sound, practical, and flexible enough to meet interconnectors' varying needs. A policy allowing negotiated arrangements best meets these criteria.

IAC: No position.

SOUTHERN BELL: This Commission has the authority to order different forms and conditions than those ordered by the FCC. Southern Bell believes, however, that the terms and conditions

approved by the FCC for expanded interconnection for switched access should be approved by this Commission as well. Specifically, this Commission should order that virtual collocation, checker boarding, and DSO level interconnection be handled in the same way as ordered by the FCC.

SPRINT: The Commission should embrace the same switched interconnection policies and prices that were adopted by the FCC. Given that the same facilities will be used to interconnect both interstate and intrastate traffic, it is both appropriate and reasonable that interconnection prices and policies be consistent between the two jurisdictions.

TELEPORT: The Commission should simply order the LECs to use the rates and rate structures they established for their interstate switched tariffs, which in turn were structured on their interstate special access interconnection tariffs and to mirror any changes in those interstate rates.

TIME WARNER: Except for decisions reached in other issues in this hearing, the Commission should mirror the forms and conditions of expanded interconnection established by the FCC. Incumbent LECs should be granted no pricing flexibility beyond that provided by the FCC.

UNITED/CENTEL: In view of the user's ability to send both intrastate and interstate traffic across the same facility, the terms and conditions for use of the facility should be the same regardless of jurisdiction, to avoid forum shopping. However, the FCC's pricing flexibility plan does not provide adequate flexibility for appropriate company-competitive responses. This Commission should grant the Companies' request to implement zone density pricing in addition to contract service arrangements (CSAs).

OPC: No position.

STAFF ANALYSIS:

Forms and Conditions For Expanded Interconnection as Prescribed by the Federal Communications Commission

After the District Court remanded the issue of physical versus virtual collocation back to the FCC, the FCC changed its original decision that established a mandatory physical collocation policy. On July 25, 1994, the FCC established a mandatory virtual collocation policy for special and switched

access expanded interconnection. The FCC provided for two forms of expanded interconnection: physical collocation and virtual collocation. The FCC defines physical collocation as an offering that enables an interconnector to locate its own transmission equipment in a segregated portion of a LEC central office. The interconnector pays a tariffed charge to the LEC for the use of that central office space, and may enter the central office to install, maintain, and repair the collocated equipment. Virtual collocation, as defined by the FCC is defined as an offering in which the LEC owns or leases and exercises exclusive physical control over the transmission equipment located in the central office, that terminates the interconnector's circuits. The LEC dedicates this equipment to the exclusive use of the interconnector, and provides installation, maintenance, and repair services on a non-discriminatory basis. The FCC found that requiring mandatory virtual collocation was in the public interest.

Forms and Conditions for Expanded Interconnection
Preferred by the LECs

ALLTEL witness Eudy testified that the FCC's decision on expanded interconnection exempted Tier 2 LECs, such as ALLTEL, from the requirement to provide expanded interconnection. (Eudy TR 94) ALLTEL believes that the rationale presented by the FCC for not requiring expanded interconnection for private line/special access by Tier 2 LECs also holds for switched access interconnection. (Eudy TR 95-96) The FCC found that requiring expanded interconnection for special access by Tier 2 LECs would have an adverse impact on universal service. (Eudy TR 94) Diversion of special access traffic from the network of a Tier 2 LEC would have a large impact on this type of LEC. (Eudy TR 94)

Staff's review of witness Eudy's testimony found no empirical data specifying estimated revenue losses that would stem from the implementation of expanded interconnection. Witness Eudy's testimony did not provide any evidence of potential competitors in the ALLTEL service area. Further, her testimony did not provide evidence supporting the assertion that universal service would be adversely impacted due to expanded interconnection. While staff believes that in theory a diversion of traffic from ALLTEL's switched access facilities may result in a need to increase revenues from other sources, staff cannot conclude what the extent of the impact will be. More importantly, we believe that without evidence of the potential of a market entrant in the ALLTEL service area, we cannot conclude that there will be any competition for switched access in the

ALLTEL service area after the implementation of expanded interconnection. Staff found no evidence that would indicate that AAVs intended on competing for switched access in Tier 2 LEC service areas such as ALLTEL's.

GTEFL believes that the FCC's order on expanded interconnection did not preempt this Commission from implementing its own forms and conditions for switched access expanded interconnection. (Beauvais TR 195) The Commission can develop interconnection policies that meet the specific needs and concerns of the state. (Beauvais TR 195) Staff found nothing in witness Beauvais' testimony that lists the specific needs and concerns of Florida regarding switched transport nor how these needs differed from those on the interstate level.

Witness Beauvais did mention, however, some specific drawbacks to mandatory physical collocation. Witness Beauvais testified that space allocation is a concern. (Beauvais TR 204) Witness Beauvais expressed concern that the FCC's expanded interconnection order did not provide a LEC the opportunity to deny physical collocation when floor space was available. (Beauvais TR 205) This may lead to a LEC having to expand its central office in order to provide additional space for its own operations. (Beauvais TR 205) Expanding office space may also lead to an increase in rates. (Beauvais TR 205) Physical collocation impacts a LEC's capital planning efforts because it forces LECs to take into account possible physical collocation requests. (Beauvais TR 205) Space constraints may lead to the perception that one party was unfairly allowed to collocate while another party was not. (Beauvais TR 206) Staff's review of testimony from nonLECs did not reveal statements that countered GTEFL's assertions regarding expanded interconnection's impact on the allocation of floor space.

Southern Bell witness Denton testified that the Florida Commission should adopt the FCC's approach to expanded interconnection for switched access. (Denton TR 360) Witness Denton argued that if the interstate and intrastate structures for expanded interconnection are different, it would result in administrative problems. (Denton TR 360) Staff found no specific examples, however, of administrative problems in the testimony of witness Denton. Staff, however, did not find any testimony from nonLEC witnesses that refuted Southern Bell's assertions that administrative problems would occur with the implementation of mandatory physical collocation.

United's concern regarding terms and conditions for expanded interconnection was to limit the customer's ability and incentive to "forum shop." (Poag TR 784) To avoid this problem, witness Poag believes the terms and conditions adopted by the Commission for expanded interconnection should be the same as those established by the FCC. (Poag TR 784) Again, staff's review of nonLEC testimony found no evidence that countered United's assertions regarding forum shopping.

Forms and Conditions For Expanded Interconnection Preferred By Non-LECs

FCTA argued that the Commission should not allow LECs the option of providing either virtual or physical collocation. Providing LECs such an option will have a negative impact on the technical, operational, and financial characteristics of the interconnector. (Smith TR 569) FCTA, however, could not specify what the impact on technical characteristics would be. (Smith TR 577) Review by staff of witness Smith's testimony found no empirical data documenting the estimated impact on interconnectors resulting from a failure to establish mandatory physical collocation. The specific operational problems that would occur from not requiring mandatory physical collocation involve an interconnector's ability to maintain, modify, and access their equipment. (Smith TR 577)

ICI witness Metcalf testified that the Commission should base its expanded interconnection policies on those established by the FCC (Metcalf TR 52) Basing expanded interconnection policy on the FCC's policy would bring about the elimination of barriers to full competition for switched services. (Metcalf TR 52) Such barriers include a nonLEC's inability to carry switched traffic from a customer to LEC central offices, a nonLEC's inability to transport traffic between nonaffiliated entities, and a nonLEC's inability to carry voice traffic. (Metcalf TR 53) Staff found no testimony from LECs that refuted witness Metcalf's assertions regarding the above barriers.

Sprint argued that the Commission should establish the same switched interconnection policies and prices that were adopted by the F.C.C. in Docket 91-141. (Rock TR 652) One reason for adopting the F.C.C.'s policy is since the same facilities are used to provide both intrastate and interstate traffic, using the same interconnection requirements and prices for intrastate and interstate facilities is appropriate. (Rock TR 652) Another reason for using the same pricing and interconnection policy involves maintaining consistency between the Commission's

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

decisions in Phase I of this docket and the decisions made in Phase II. (Rock TR 652)

Circumstances Under Which the Commission Would Impose the Same or Different Forms and Conditions of Expanded Interconnection Than the FCC

As we described above, the FCC in CC Docket No. 91-141 mandated virtual collocation for Tier 1 LECs. The FCC, however, described only one circumstance under which some type of physical collocation would be provided. In the case of physical collocation, LECs can be exempted from the FCC's mandated virtual collocation requirement if LECs opt for and explicitly consent to offering physical collocation. Again, this is the only circumstance that the FCC describes for one form of collocation versus another.

The FCC appears to leave it open to the states to define the circumstances under which one form of collocation is established over another. Staff concurs with witness Beauvais' observation that forms and conditions of expanded interconnection should match the needs of the state of Florida. (Beauvais TR 195) Unfortunately, there is not enough evidence to define the specific circumstances under which one form of expanded interconnection should be provided nor any evidence differentiating circumstances under which one form is provided on the interstate level versus the intrastate level. Without such evidence, staff cannot draw a definitive conclusion as to the circumstances under which the Commission should impose the same or different forms and conditions for expanded interconnection than the FCC. A more complete discussion of which form of expanded interconnection should be mandated by this Commission will be addressed in Issue 8 of this docket. Staff believes, however, that if virtual collocation is mandated, LECs should be exempt from virtual collocation requirements if they opt for providing physical collocation. If physical collocation is mandated by the Commission, however, LECs should be exempted from the requirements for physical collocation if allocated space is exhausted and the LEC agrees to provide virtual collocation.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

ISSUE 4: Is expanded interconnection for switched access in the public interest?

RECOMMENDATION: Yes, expanded interconnection for switched access is in the public interest. [DREW/MARSH]

POSITION OF PARTIES:

INTERMEDIA: Yes. Benefits from expanded interconnection will include more rapid deployment of new technology, system redundancy and increased protection from disastrous service outages, increased service innovation and greater customer choice, as well as price competition which will reduce the cost of telecommunications services to all customers. These benefits are critical to communications dependent businesses, and will promote the general public interest.

ALLTEL: No position.

ATT-CI: Yes. The adoption of expanded interconnection will facilitate the beginning of competition within the local exchange and will benefit consumers in much the same way as competition in other aspects of the industry.

FCTA: Yes. Expanded interconnection for switched access is in the public interest.

GTEFL: Switched access expanded interconnection may be in the public interest, but only if it is implemented in a way that will allow LECs to compete fully and fairly with non-LEC providers of the same services.

IAC: No position.

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

SPRINT: Yes. Switched interconnection will encourage competitive entry in the provisioning of switched access

services. Several benefits will be derived including accelerated deployment of new and advanced technologies and services, competitive alternatives to LEC switched transport services, improved responsiveness to access customers in the provisioning of existing services, and emerging competition that will eventually move prices closer to the cost of providing access services.

TELEPORT: Yes. Expanded interconnection for switched access will bring the benefits of competition to Florida telecommunications users. These benefits include: (1) reduced prices, (2) higher service quality, (3) operational security, (4) strategic security, and (5) the construction of local fiber optic infrastructure by TCG and other AAVs without special incentives to AAVs or risk to ratepayers.

TIME WARNER: Yes, expanded interconnection for switched access is in the public interest.

UNITED/CENTEL: The Companies believe that if all parties are given the same opportunities to compete on the basis of price, quality and technology, in the long run, the competitive provisioning of switched access transport service is in the public interest and will provide some customers the benefits of product innovation, higher quality service, network diversity, and lower prices. However, customers who do not qualify for expanded interconnection alternatives may pay more for their same service.

OPC: Yes. Expanded interconnection for switched access is in the public interest.

STAFF ANALYSIS:

What is Expanded Interconnection For Switched Access

Expanded interconnection is a collocation arrangement that permits access providers other than the local exchange companies to interconnect with the local exchange companies' networks on the local exchange companies' premises. (Guedel TR 123) Under this arrangement, the local exchange companies are required to provide space at designated points within their networks for locating (either virtually or physically) the transmission equipment of competing access providers. (Guedel TR 123) Customers can use the LECs' local loops to connect with LEC central offices and then, via expanded interconnection, select from among available access providers the switched transport

services that connect a LEC central office with an interexchange carrier's point of presence. (Guedel TR 123)

What is the Public Interest

Staff's review of the record did not identify any attempt on the part of the parties to explicitly define "public interest." When the issue of public interest was discussed by the parties, the parties made references to expanded interconnection's impact on LEC revenues, ratepayers, and on potential competitors as well as the potential benefits that customers may receive from expanded interconnection. (Metcalf TR 51; Guedel TR 126; Androssi TR 731; Beauvais TR 200) Each of the parties that provided a position on this issue in their post-hearing briefs agreed to a certain extent that expanded interconnection for switched access was indeed in the public interest. Based on the parties' discussion of the public interest, staff's criteria for our public interest determination are:

1. There are potential benefits to customers
2. There is a minimal separations impact
3. There is no significant negative revenue impact on LECs
4. There is no significant rate impact on the general body of ratepayers

Potential Benefits to Customers

ICI witness Metcalf testified that expanded interconnection would encourage users to take advantage of new, upgradeable technology and to purchase facilities for their efficiency and cost, not because there is only one supplier. (Metcalf TR 51) Witness Metcalf, citing the FCC's proceeding for expanded interconnection, also argued that expanded interconnection would increase the scope of access competition and bring the telecommunications industry closer to a competitive market. (Metcalf TR 51) Large end-users, according to witness Metcalf, have a need for service to be available from several competitive providers. With expanded interconnection, AAVs would be able to meet this need. (Metcalf TR 55)

ATT-C witness Guedel also argued that competition would facilitate customer choice as well as the development of new

services. (Guedel TR 126) Expanded interconnection would facilitate the introduction of competition within the local exchange and hence foster better price performance between competing providers of service. (Guedel TR 126)

Teleport witness Andreassi testified that with expanded interconnection AAVs could provide customers with operational and strategic security. (Andreassi TR 731)

Sprint witness Rock testified that switched interconnection would provide several benefits including accelerated deployment of new technologies, route diversity, increased responsiveness to customers and the movement of prices closer to cost. (Rock TR 650)

LEC witnesses were qualified in their testimony regarding the benefits of expanded interconnection. GTEFL witness Beauvais argued that interconnection, especially with the mandate of physical collocation, may harm LECs and their rural and residential customers on a relative basis. (Beauvais TR 200) Any benefits obtained by large customers will be at the expense of smaller rural and residential customers. (Beauvais TR 210) If large urban businesses migrate from LEC tariffed services to those provided by alternative providers, the subsidies that benefit rural and residential customers will be lost. (Beauvais TR 210-211) These subsidies, according to witness Beauvais, support the prices for services that are priced below cost. (Beauvais TR 211) If there is any benefit to the rural customer due to expanded interconnection, it will be deferred to the indefinite future. (Beauvais TR 211) Increased rates for these customers are a real possibility. (Beauvais TR 211)

Southern Bell witness Denton testified that expanded interconnection could be in the public interest because it could result in additional competitive alternatives. (Denton TR 361) In order to fully compete and ensure that subscribers receive service from the most efficient competitor, LECs should be afforded pricing flexibility. (Denton TR 362) Pricing flexibility allows the LECs to retain as much contribution as possible. (Denton TR 362) Residential ratepayers may be financially affected if LECs are not allowed to compete fully to provide access services. (Denton TR 363) With competition there is the threat that contribution from switched access service will be lost. (Denton TR 363)

United/Centel witness Poag testified that in the long run, the competitive provisioning of switched transport service is in the public interest and will provide customers the benefits of

product innovation, higher quality service, network diversity, and lower prices. (Poag TR 786-787) Witness Poag pointed out, however, that endusers who are able to take advantage of expanded interconnection alternatives will pay less while those who cannot will pay more for the same service. (Poag TR 787)

Based on the above testimony staff concludes that the benefits that may occur from the introduction of expanded interconnection for switched access include:

1. Product innovation
2. Increased customer choice
3. Operational and strategic security
4. Increased quality of service
5. Deployment of new technology
6. Network diversity

Revenue Impact on the LECs

The LECs argue that intrastate expanded interconnection for switched access will have a negative impact on their revenues. (Beauvais TR 266; Poag TR 808) The resulting loss of contribution could cause rates to go up for their small residential and business customers. (Poag TR 808-809, 790) However, several other parties contend that expanded interconnection for switched access will not cause serious financial harm to the LECs. (Andreassi TR 712-714, 732; Rock TR 651) The revenues that are at risk are the transport portion of switched access revenues which represent the facilities running from the serving wire center to the customer premises, including any successive end offices. (Hendrix 431)

Teleport witness Andreassi believes that the impact of offering interstate switched access interconnection as compared to the total interstate switched access market is very small. He estimates that \$418 million of the \$11 billion market, under 5 percent, is all that will become competitive. (TR 713, 750) The \$418 million represents the dedicated trunk portion of local transport for interstate switched access; this is the only portion Teleport believes it can provide due to the current regulatory policy. (Andreassi TR 754) He argues that the impact on the intrastate side will be even smaller. (TR 713)

On a company-specific basis, GTEFL witness Beauvais estimates that for each minute of use that is removed from GTEFL's transport facilities, GTEFL will lose \$0.0073 per minute of revenue, and \$0.0053 per minute of contribution. (Beauvais TR 213) The total revenue and contribution loss would depend on the number of entities interconnecting at GTEFL central offices. (Beauvais TR 214) At its most conservative estimate, GTEFL would expect to lose \$2,769,500 in contribution per year. (Beauvais TR 216) Theoretically, GTEFL could lose as much as \$27,695,000. (Beauvais TR 214) Witness Beauvais points out that "the \$27 million figure is very unrealistic." (TR 214) He concedes that the potential revenue loss from expanded interconnection directly is relatively minor. (Beauvais TR 251-252)

SBT witness Hendrix estimates that the revenues at risk for his company represent about 16 percent of all intrastate switched access. (TR 431) Based on SBT's 1993 FPSC annual report included in Exhibit 24, staff calculates that this would be less than 2 percent of SBT's total intrastate revenues. IAC witness Gillan noted that Southern Bell has not received a single request for collocation in Florida; thus, he argues that the "'potential' for competition has not translated to a 'reality'." Witness Gillan also believes that intrastate dedicated transport is a relatively small market. (TR 963) For SBT, the amount would be about \$9 million, representing less than 4 percent of its intrastate switched access revenues (\$236 million for 1993). (TR 963)

When asked what it would take in order for Teleport to compete for the total switched access market, witness Andreassi responded that the Company would have to be authorized as a local exchange carrier and offer switched access services. (TR 750) GTEFL witness Beauvais agrees with Andreassi that at this time the statutes prohibit AAVs from carrying switched transport. (TR 285) Before there could be a substantial loss of contribution, this would have to change. (Beauvais TR 285) Witness Gillan also argues that:

The competitive opportunity presented by expanded interconnection is overstated. While this event makes it theoretically possible for interexchange carriers to use an alternative provider for their dedicated transport needs, no real competition has yet developed. (TR 962-3)

In principle, witness Beauvais agrees. From an economic sense, the greatest danger to revenues will come when there is full competition in the local network. If and when that occurs, the market can erode very quickly. (Beauvais TR 286-287)

There is evidence that competition on the network may actually prevent some revenue loss. Intermedia witness Metcalf argues that when a large user leaves the network and goes to VSAT or other such devices to provide his own transport, the LECs and all other network service providers such as IXC's lose the revenue. (TR 80) In such a case it is a permanent loss, because the user has made an investment in a private network. (Metcalf TR 80) As long as the large user remains on someone's network, the LEC has a greater chance to get that customer back than if the user purchases a private network. (Metcalf TR 80-81) Witness Metcalf opined, "It's the only way that you retain some portion of the revenue and that the business users can meet their technology needs." (Metcalf TR 81)

In principle, GTEFL witness Beauvais agreed. He stated that to the extent that these large volume customers have more options available to them, then there would be relatively less movement to the private networks and VSAT type arrangements than there otherwise would be. (TR 258) At the same time, he pointed out that these other networks, at least from a LEC perspective, simply look like competitive alternatives. (Beauvais TR 258) However, staff agrees with witness Metcalf that a customer, having left the public network and invested in a private network, is less likely to return to the public network. It would be less costly for a customer to return to the LEC network from a competitor's network, since the customer would not have the sunk cost of the private network equipment.

In fact, relative to today, overall revenues could increase. (Beauvais TR 253) GTEFL did not include potential growth, such as minutes-of-use growth, line growth, and customer growth in its evaluation of the impacts. (TR 253) While witness Beauvais argued that the LEC may lose contribution relative to what the LEC would have received [emphasis added], he agreed that in an absolute sense, revenues could go up. (Beauvais TR 253) Sprint witness Rock pointed out that switched interconnection could result in a new revenue source for the local exchange company in the form of monthly and nonrecurring charges. (TR 651) SBT witness Hendrix stated that the interconnectors would have to pay a cross-connect charge, which is functionally the same as the local channel segment, although the rate is not the same. (TR 523) If the interconnector uses the local loop, it will also have to

pay the LEC for the local switching and the carrier common line charges. (Hendrix TR 518)

Based on the testimony, it appears that there will be no substantial impact on LEC revenues as a result of switched expanded interconnection in the short run. The long run is more difficult to evaluate. The parties who discussed the issue seemed to agree that the AAVs currently are limited in the services that they can provide, and, therefore, competition will be limited. Until such competition becomes a real possibility, the potential impact is unknown.

Potential Separations Impact

Only Southern Bell and GTEFL provided testimony regarding the separations impact of expanded interconnection. The two companies had conflicting views.

Because SBT has not developed a forecast of demand for collocation, witness Denton was unable to quantify the potential separations impact. (Denton TR 362) Upon cross examination, witness Denton could not conclude whether or not there will be a separations impact as a result of switched expanded interconnection. (Denton TR 387) He stated that he could not find a basis upon which to evaluate any impact. "So we didn't." (Denton 387) Thus, it is unclear whether SBT believes there will be an impact or not, let alone how much it might be. SBT did not brief this portion of the issue.

On the other hand, GTEFL witness Beauvais argues that the increased competition fostered by interconnection could have a significant impact on separations. (TR 230) He explains that, because of a decrease in switched access minutes of use, both intra- and interstate, the LEC investment in jointly used facilities will have to be reallocated. (TR 232) Thus, the amount allocated through separations to such services as intraLATA toll and EAS will increase. (TR 232)

Yet, witness Beauvais also pointed out in other testimony that, at least in the short run, competition will be limited, due to statutory restraints. It will not be until there is full competition in the local network that any adverse impacts will occur. (TR 285) If the competition will be limited, staff does not understand how there could be a significant impact on separations.

Indeed, the FCC did not change any of the existing separations rules in the Switched Transport Expanded Interconnection Order, because it found that any indirect cost reallocation that might result from the implementation of expanded interconnection would not be of sufficient magnitude to undermine universal service or threaten state regulatory programs. (para. 147-51) Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, FCC 93-379) The FCC stated,

"Because the initial magnitude of expanded interconnection costs and revenues is likely to be very small relative to LECs' total regulated costs and revenues, we conclude that any effect of the existing rules on the overall separations allocations should be minimal and should permit ample time for the Joint Board to make a recommendation to the Commission. (Para. 137, p. 473249 Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, FCC 94-190)

Staff agrees with the FCC that, due to the limited impact, at least in the short run, of switched expanded interconnection, any separations impact will be negligible.

Impact on General Body of Ratepayers

The LECs expressed concern that the increased competition from switched access expanded interconnection will impact local rates. ALLTEL, for example, believes that competition will: (1) create downward pressure on some of ALLTEL's switched access rates, (2) result in the loss of large switched access customers, or (3) a combination of (1) and (2). (Eudy TR 98) If any of these occurs, it could put pressure on ALLTEL's other rates, especially the rates ALLTEL charges to its basic local business and residential customers. (Eudy TR 98)

GTEFL witness Beauvais testified that expanded interconnection for switched access is likely to have a negative impact on contribution that historically subsidizes basic residential rates. (Beauvais TR 190) He argues that, as large business customers migrate from LEC switched access services to those of LEC competitors, contribution that benefits rural and residential customers will be eroded. (Beauvais TR 210)

SBT witness Denton also argued that there was a significant threat to contribution received by LECs for switched transport access services. (Denton TR 363) These services provide a contribution to residential service; thus, the ratepayer could be adversely affected. (Denton TR 363)

United/Centel witness Poag concurred with the other LEC witnesses when he testified that as contribution from switched access services are eroded by access competition, "the prices of subsidized services, such as local dial tone, will necessarily have to be increased or other sources of subsidies will have to be found." (Poag TR 789)

As discussed above, the evidence indicates that there will be no substantial impact on LEC revenues as a result of switched expanded interconnection in the short run. Thus, there would be little, if any impact on the general body of ratepayers. However, as with the revenue impact, it is impossible to quantify what any long-run effect on ratepayers will be, due to the unknown factors.

Conclusion

Staff believes that expanded interconnection for switched access meets our established criteria for the public interest. There are potential benefits to customers due to expanded interconnection. These benefits include customer choice, strategic and operational network security, product innovation, and the deployment of new technology. Staff believes that, at least in the short run, the revenue impact of allowing expanded interconnection for switched access will be insignificant. Based on the facts in this record, there is no indication that there will be a substantial negative impact on residential or small business ratepayers. The separations impact will also be negligible. Finally, staff believes that the impact on the general body of ratepayers will be minor.

ISSUE 5: Is the offering of dedicated and switched services between non-affiliated entities by non-LECs in the public interest?

RECOMMENDATION: Yes. The offering of dedicated and switched services between non-affiliated entities by non-LECs is in the public interest. [DREW]

POSITION OF PARTIES:

INTERMEDIA: Yes. The non-affiliated entities prohibition serves no public interest, and actually prevents customers from receiving services from their provider of choice. The public interest demands that all customers be able to receive dedicated and switched services from their provider of choice.

ALLTEL: No position.

ATT-C: Yes. This also represents a potential for the introduction of some competition within the local exchange. It is the public interest for the same reasons discussed in ATT-C's discussion of Issue 4.

FCTA: Yes. Non-LEC offering of dedicated and switched access services between non-affiliated entities is in the public interest. Such a regulatory approach will provide Florida's consumers with the benefits of a telecommunications market.

GTEFL: GTEFL believes that a broader scope of competitive entry for dedicated and switched services may be in the public interest if competitive constraints on the LEC are lifted. However, AAV provision of service between unaffiliated entities cannot occur without legislative change.

IAC: No position.

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

SPRINT: No position.

TELEPORT: Yes. Immediately permitting AAVs to provide dedicated and switched services between non-affiliated entities will greatly enhance the competitive environment in the state and will

bring benefits of operational and strategic security to potential customers in Florida.

TIME WARNER: Yes. Non-LEC offering of dedicated and switched services between non-affiliated entities is in the public interest. Such a regulatory approach will provide Florida's consumers with the benefits of a telecommunications market.

UNITED/CENTEL: If allowing customers more options for their telecommunications service requirements is deemed to be in the public interest, then permitting dedicated and switched services to be provisioned between non-affiliated entities by non-LECs could be considered in the public interest. However, as customer options increase, more competitive inroads into traditional LEC service areas are developed and the overall public interest will not be served if competitive opportunities are expanded without providing any additional flexibility to the LECs.

OPC: Yes. Offering dedicated and switched services between non-affiliated entities by non-LECs is in the public interest.

STAFF ANALYSIS:

What is an Unaffiliated Entity

Commission Order Number 24877 provides a definition of affiliated entities. Affiliated entities are defined as those corporations, partnerships, proprietorships or other groups that hold stock in excess of fifty percent of the stock of the entity which claims to be affiliated. Therefore, if an entity controls less than fifty percent of the stock of another entity, these entities are not affiliated. Section 364.337(3)(a) limits the provision of dedicated private line services by alternative access vendors between affiliated entities only.

Defining the Public Interest

As in Issue 4, staff's review of the parties' testimony did not identify any attempt to provide an explicit definition of the public interest. Non-LEC witnesses testified that the offering of dedicated and switched services between unaffiliated entities is in the public interest. (Metcalfe TR 50; Andreassi TR 716) Witness Denton of Southern Bell testified that if the allowance of more options for telecommunications services is in the public interest, then permitting dedicated and switched services between non-affiliated entities by non-LECs would provide additional options to end-users. (Denton TR 364) Southern Bell's primary

concern on this issue, as in Issue 4, is the erosion of contribution that has been historically obtained from these services. (Denton TR 364)

Based on the testimony provided in the record, staff's criteria for our public interest determination in this issue are the following:

1. There are potential benefits to customers
2. There is no significant negative revenue impact on LECs
3. There is no significant rate impact on the general body of ratepayers

Potential Benefits to Customers

ICI witness Metcalf testified that non-LEC provision of both dedicated and switched services between non-affiliated entities was in the public interest. (Metcalf TR 50) Witness Metcalf also testified that the restriction on transport between non-affiliates is inefficient and expensive for users that wish to transport large amounts of data between themselves and a large customer. (Metcalf TR 53)

Teleport witness Andreassi argued that one benefit that would result from non-LECs providing service between non-affiliated entities is the enhancement of Florida's competitive environment. (Andreassi TR 716) Specifically, allowing this type of service would result in fiber optic facility deployment and a network that is operationally and strategically secure. (Andreassi TR 717) Operational security is described as the ability to acquire diverse, redundant routing and switching service from two independent local networks. (Andreassi TR 717) The goal of an operationally secure network is to insure against network failure. (Andreassi TR 717) Strategic security refers to a business that obtains services from a telecommunications provider that does not compete in that business' core business. (Andreassi TR 717)

Staff found no LEC testimony refuting any of the benefits described above by non-LEC witnesses. Staff believes that, based on the above testimony, allowing for dedicated and switched transport by non-LECs will provide customers with another choice

for data transport between non-affiliates. Non-LEC provision of such service will not come to fruition, however, until current legislation is changed. In summary staff believes that the three benefits derived from allowing non-LECs to provide service between non-affiliated entities include:

1. The deployment of fiber optic facilities
2. Reduction in inefficiencies and expense for end-users
3. Providing networks that are operationally and strategically secure

Revenue Impacts on the LEC

Southern Bell witness Denton testified that LEC revenues will erode due to the additional competition for switched and dedicated transport. (Denton TR 364) These are the very concerns that witness Denton and other LEC witnesses testified to in Issue 4. It is staff's conclusion that the revenue impact from non-LEC provision of dedicated and switched services between unaffiliated entities will be minor if at all existent in the short run. (Beauvais TR 251; Gillan TR 963; Metcalf TR 56)

Impact on General Body of Ratepayers

With the exception of witness Denton, none of the LEC witnesses testified on the impact on the general body of ratepayers derived from providing dedicated and switched services between non-affiliated entities. Witness Denton testified that as with the provision of expanded interconnection for switched access, the competition from non-LEC providers for service between non-affiliates will erode the contribution that historically subsidizes other local exchange services. (Denton TR 364)

Staff believes that the revenue impact to the general body of ratepayers in the short run will be minor but will increase in the long run. In the long run competition in the switched transport market may increase, with more and more traffic bypassing LEC switches. (Beauvais TR 219) We expect that LEC responses to any increase in switched transport competition would include the reduction in contribution in markets that competitors target. (Hendrix TR 533)

Conclusion

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

Allowing non-LEC entities to provide dedicated and switched service between non-affiliated entities is in the public interest. There are a number of benefits to customers from allowing non-LECs to provide such services between non-affiliates. There will be a revenue impact on the LECs; however, testimony on this issue indicates that such impact will be minor. Staff expects that in the short run the impact on the general body of ratepayers will be minor but we acknowledge that with an increase in competition in the future the impact will increase. In order for customers to benefit from the provision of service by non-LECs between unaffiliates, the current legislative restrictions on dedicated services between non-affiliates will have to be removed.

ISSUE 6: Does Chapter 364 Florida Statutes allow the Commission to require expanded interconnection for switched access?

RECOMMENDATION: There is nothing in Chapter 364 that prohibits expanded interconnection for switched access. However, there are certain prohibitions as to the extent which expanded interconnection for switched access can be implemented. Pursuant to Sections 364.335(3) and 364.337, Florida Statutes, AAVs are prohibited from interconnecting with the LEC switch for the provision of switched access. AAVs can provide transport of switched traffic between a single IXC's points of presence.
[CANZANO]

POSITION OF PARTIES

INTERMEDIA: Yes.

ALLTEL: No position.

AT&T: No position.

FCTA: Yes. Nothing in Chapter 364, Florida Statutes, prohibits the Commission from requiring expanded interconnection for switched access.

GTEFL: The Commission may adopt a policy of switched access expanded interconnection, but its implementation would be limited by statutory restrictions.

IAC: No position.

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

SPRINT: No position.

TELEPORT: Yes. Chapter 364 allows the Commission to require expanded interconnection for switched access for the same reasons it allowed the Commission to order special access interconnection. The dedicated transport service provided by AAVs is the same in both instances.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

TIME WARNER: Yes. Nothing in Chapter 364, Florida Statutes, prohibits the Commission from requiring expanded interconnection for switched access.

UNITED/CENTEL: Yes. However, there is nothing in Chapter 364, Florida Statutes, which allows the Commission to impose mandatory physical collocation requirements as an integral part of any expanded interconnection decision.

OPC: No position.

STAFF ANALYSIS: Expanded interconnection for switched access is not specifically addressed in Chapter 364, Florida Statutes. The parties essentially agree that nothing in Chapter 364 prohibits the Commission from requiring expanded interconnection for switched access; however, the parties differ as to the extent which expanded interconnection can be implemented.

GTEFL, Southern Bell, FCTA, and Time Warner generally agree that switched access interconnection authority will not supersede other statutory restraints on competition and that interconnectors will not be allowed to provide services that are otherwise prohibited by law. GTEFL and Southern Bell address limitations on AAVs as interconnectors. Intermedia and Teleport set forth positions that AAVs should be allowed to transport such traffic if they are permitted to interconnect. GTEFL and Southern Bell object to Intermedia and Teleport's positions that AAVs will be able to provide dedicated trunk portions of switched access transport and assert that AAVs may not provide switched services.

United/Centel state that nothing in Chapter 364 allows the Commission to impose mandatory physical collocation requirements as an integral part of expanded interconnection, which is discussed in Issue 7.

ATT-C, IAC, Sprint, and OPC have no position on this issue.

The primary question is whether the contemplated use of expanded interconnection for switched access is permissible under Chapter 364, Florida Statutes, generally or whether specific provisions restrict some contemplated use of the interconnection. In addition to its general regulatory powers, Section 364.01, the Commission is responsible for regulating interconnection of telecommunications facilities, Section 364.16, and encouraging cost-effective technological innovation and competition if doing so will benefit the public by making modern and adequate

telecommunications services available at reasonable prices, Section 364.01(c). Specifically, Sections 364.335 and 364.337 must be carefully reviewed to determine whether there are restrictions on the contemplated use of interconnection for switched access.

Although staff agrees with Teleport and Intermedia's positions that the Commission is required to encourage effective competition in the telecommunications industry, the Commission must first consider specific statutory limitations.

Pursuant to the provisions of Section 364.337(3)(a), Florida Statutes,

'alternative access vendor services' means the provision of private line service between an entity and its facilities at another location or dedicated access service between an end-user and an interexchange carrier by other than a local exchange telecommunications company, and are considered to be interexchange telecommunications services.

In addition, private line service is defined in Section 364.335(3), Florida Statutes, as

any point-to-point or point-to-multipoint service dedicated to the exclusive use of an end-user for the transmission of any public telecommunications service.

Thus, under existing law, AAVs may provide only private line or dedicated access services.

The types of services which an AAV can provide has been decided by the Commission in Order No. 24877, issued August 2, 1991, in Docket No. 890183-TL. In the AAV Order, the Commission specifically found that

- 1) AAVs can provide interexchange and intraexchange private line service and dedicated access between an end-user and an IXC;
- 2) Section 364.337 only allows AAVs to provide private line service between affiliated entities; and
- 3) the provision of switched services is prohibited for AAVs.

The Commission found that the affiliated entity limitation extends to any part of dedicated (point-to-point) service in which an IXC plays a part. If an AAV provides special access which is part of an end-to-end dedicated service, it may only be provided between an end-user and its affiliates. However, an AAV may provide special access which connects an end-user to an IXC-POP. (AAV Order, p.7)

Teleport contends that local transport service involves a dedicated, point-to-point facility between the LEC central office (collocation point) and the IXC POP. Teleport asserts that it is dedicated to the exclusive use of the end-user, in this case, the IXC. Teleport states that the dedicated local transport which would be provided by a non-LEC, including an AAV, is functionally equivalent to the dedicated transport service previously approved in Phase I. Teleport contends that the record shows that local transport is a dedicated, point-to-point service which is technically and economically equivalent to a private line service and does not entail switching and distribution of calls. (TR 283, 743)

Southern Bell states that switching involves 3 primary elements: 1) the carrier common line, which goes from an end-user to a LEC central office; 2) local switching, which occurs at the central office, and 3) local transport, which goes from the LEC central office or serving wire center to the IXC. Switched access service only entails switching in one of the three elements that provide the connection from the end-user to the IXC. Southern Bell notes that the features of access service that AAVs are authorized to provide are 1) it must go from an end-user to an IXC; and 2) it must be entirely dedicated.

GTEFL states that the AAVs agreed in the Commission's 1991 general investigation that they were not authorized to provide switched services and did not intend to do so. GTEFL concurs with Southern Bell that switched transport service is and has always been part of switched access service. GTEFL maintains that the Commission's finding that AAVs are in the public interest contemplated that they would not provide anything other than special access as it has always been understood. GTEFL states that the Commission declined to certificate AAVs as IXCs partly because it would cause confusion about the provision of switched interexchange service. GTEFL asserts that this observation recognizes that AAVs, unlike IXCs, cannot provide switched access services in any form.

Staff's interpretation of Teleport's position is that AAVs can provide a switched access trunk that is technically and economically equivalent to the dedicated transport service approved in Phase I. Although this may be logical, staff believes that AAVs are prohibited by statute from providing switched access transport except for transport between an IXC's facilities.

With expanded interconnection for switched access, the customer controls the destination of a transmission by way of the LEC's switch, in that it could be any local call or a long-distance call. Thus, the end-user is not being provided dedicated private line service or special access. Section 364.337 states that AAVs can provide only private line service or special access service between an end-user and an interexchange carrier.

In fact, on reconsideration of the AAV Order, the Commission prohibited AAVs from offering packet switching service because the "customer control capability could transform a virtual private line service into a switched service." (Order 25546, p.3)

We believe that Sections 364.335 and 364.337, Florida Statutes, allow AAVs to provide only dedicated private line service and dedicated special access. Those statutes do not authorize any transmission method other than dedicated. (Order No. 25546, p. 3,) (Emphasis added)

Thus, the Commission found that only dedicated transmission is permissible under Sections 364.335 and 364.337. Likewise, in expanded interconnection for switched access, the customer has control capability; thus, the service is not dedicated private line service nor is it special access service - it is a switched service.

Staff believes that switched access is not dedicated transport and does not meet the statutory requirements in Sections 364.335 and 364.337. To allow AAVs switched access interconnection would be adding a switch between an AAV and the end-user. Staff contends that the AAV's position is, in essence, a mere extension of the AAV's network into the switched services arena.

GTEFL also asserts that another hurdle to AAV provision of switched access transport is the affiliated entity restriction. Switched access transport is not provided between affiliated

entities; rather, by definition, it is a switched service provided between a local exchange company and an IXC. Thus, GTEFL argues that AAV provision of any portion of switched transport would violate the statutory affiliate limitation on AAV operations.

Intermedia's position is that Chapter 364 generally encourages competitive provision of dedicated transport services and that no provision prohibits transport of switched traffic. Essentially Intermedia presents two lines of argument. If such transport is viewed as local service, then it qualifies as a private line service and may be provided by an AAV under Section 364.335(3). If the transport is viewed as an interexchange service, then it may be provided by both IXCs and AAVs under Section 364.337. In addition, this service is no different than a number of other transport services currently being provided competitively.

Intermedia states that the contemplated use of interconnection is to allow dedicated transport from the point of interconnection with the central office to the IXC's POP. Intermedia's first argument is the position that transport is private line. Intermedia asserts that if dedicated transport of switched long distance traffic to the IXC's POP is viewed to be competitive local service, then 1) Section 364.335(3) controls; and 2) this dedicated transport meets the statutory definition of private line.

Intermedia contends that the transport segment is a) point-to-point; b) for the exclusive use of the subscriber, ie, the IXC; and c) for the transmission of a public telecommunications service. The AAV would take the switched long-distance traffic delivered to it through interconnection and transmit it down a dedicated telecommunications pipeline to the IXC's POP. The AAV would have no ability to terminate the traffic elsewhere. Intermedia asserts this meets the statutory test and for the first time, dedicated transport has been unbundled from other elements, such as switching and local channel elements, with which it was part of a switched product.

Intermedia also contends that IXCs and other businesses are end-users within the meaning of Section 364.335. Intermedia suggests that "end-user" often means the person using the telephone facility to place a call and an IXC does not fit this narrow view of the term. Instead, Intermedia asserts that "end-user" should be interpreted as "the subscriber that uses the service." Both natural persons and businesses would qualify to

use private lines, which would shift the focus of the statutory definition from the entity using the service to the nature of the service being used. Thus, Intermedia argues that dedicated transport of switched long distance traffic meets the statutory definition of private line service under Section 364.335, Florida Statutes. If such transport is viewed to be a local service, then AAVs are allowed to use expanded interconnection for the purpose of providing that service.

Staff believes that Intermedia's arguments fail for some of the same reasons as Teleport's.

Intermedia states that the contemplated use of interconnection is to allow dedicated transport from the point of interconnection with the central office to the IXC's POP. Staff believes that this interpretation fails the statutory provisions. If the transmission passes from the end-user through the LEC's switch, it is a switched service which the AAV is prohibited from providing as discussed previously. As staff previously discussed, to allow AAVs switched access interconnection would be adding a switch between an AAV and the end-user. In essence, this would be an extension of the AAV's network into the switched services arena.

Intermedia attempts to persuade us that the meaning of "end-user" in Section 364.335(3) should be interpreted as "the subscriber that uses the service" and should include IXCs. Intermedia then asserts that an IXC can be an end-user for which an AAV could provide dedicated transport to the IXC's POP. However, under Rule 25-4.003(46), Florida Administrative Code, in the general definitions section, "subscriber" is defined as any person, firm, partnership, corporation, municipality, cooperative organization, or governmental agency supplied with communication service by a telephone company." (Emphasis added) "End-user," on the other hand, is defined in Rule 25-24.610(1)(c), Florida Administrative Code, governing operator service providers, as a person who initiates a call or is billed for a telephone call. Staff believes that it is inappropriate to confuse the two terms. An end-user initiates the call. IXCs do not initiate calls; instead, they supply a service to end-users by receiving and transmitting traffic from end-users. Therefore, staff believes that an IXC is not an end-user within the meaning of Section 364.335(3).

Intermedia then contends that if dedicated transport is not viewed to be a local service, but rather an interexchange service, then such service must be authorized under Section

364.337, Florida Statutes. ICI states that this section gives the Commission the statutory authority to authorize the provision of competitive interexchange services, and entities receive certificates to operate as IXC's, AAV's or both.

Intermedia states that an IXC may enter into a collocation agreement with the LEC and choose to provide dedicated transport to other IXC's, and asserts that not one word in Chapter 364 prohibits this type of transport. Intermedia suggests that if transport is considered an interexchange service, then Intermedia, which has an IXC certificate, can provide this service.

Although Intermedia says there is not one word in the statutes prohibiting transport from one IXC to another, the Commission has previously held there are certain restrictions. The bypass restriction set forth in Order No. 12765 provides that "IXC's shall not be permitted to construct facilities to bypass the LEC's unless it can be demonstrated that the LEC cannot offer the facilities at a competitive price and in a timely manner." On page 18 of the AAV Order, the Commission found it appropriate to change the bypass restriction so that AAV's are authorized to provide bypass services subject to certain conditions. The Commission specifically found that "neither IXC's nor any other entities shall bypass LEC facilities unless they are certified as AAV's." Thus, staff contends that if an IXC collocates in a LEC's central office and seeks to transport traffic to another IXC, it would violate the bypass restriction.

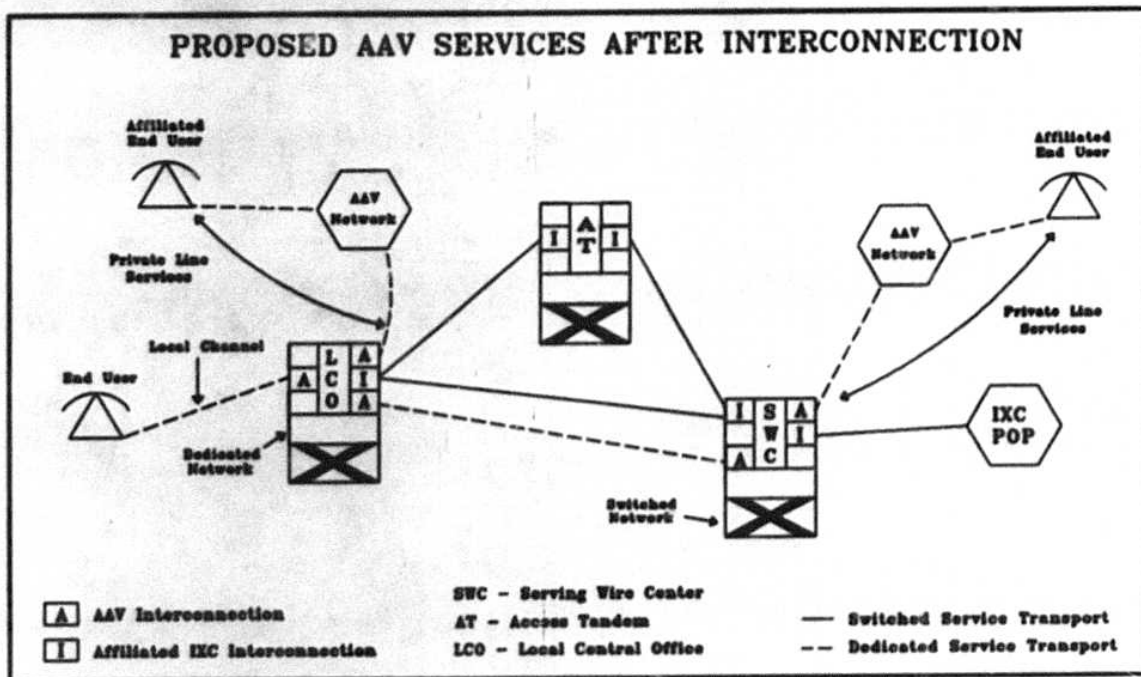
Intermedia contends that if an entity holds only an AAV license and dedicated transport is viewed as an interexchange service, then it may still provide such service under Section 364.337(3). Intermedia states that it is clear that dedicated transport does not involve switching and meets the statutory definition of private line. Intermedia also states that transport configurations may vary. Intermedia suggests that whether the IXC has its facilities at the point of interconnection with the LEC depends on the arrangements made between it and the AAV. ICI states that no general prohibition could be made pursuant to Section 364.337(3). ICI states, for example, an IXC could interconnect its facilities with the LEC through a physical or virtual collocation arrangement with the AAV. Thus, Intermedia asserts that an AAV could grant an IXC collocation with it for the purposes of ensuring that the AAV's transport service was between the IXC's facilities at the point of interconnection and its facilities at its POP.

As staff asserted previously, if the transmission passes from the end-user through the LEC's switch, it is a switched service which the AAV is prohibited from providing. Staff also believes that it is well-established that an AAV can provide IXC POP-to-POP connection. (AAV Order, p. 7) Therefore, staff believes that AAVs can provide switched access transport between an IXC's facilities only if the LEC's switch is not in-between the IXC's facilities.

Southern Bell submits that the plain language reading of Section 364.337(3)(a) cannot be reasonably construed to mean that an AAV can carry switched access traffic. It would have been easy enough for the legislature to provide that an AAV cannot provide switching, but that it can provide any non-switched part of any access service, including switched access. Instead, Southern Bell notes that the legislature chose to specifically limit alternative access vendor services to the provision of dedicated access, rather than a dedicated piece of switched access, and to further provide that this dedicated service is to be all the way from the end-user to the IXC. Thus, Southern Bell contends that any argument that an AAV can use expanded interconnection as a means to carry switched traffic under the language of Section 364.337 is "clearly untenable and must be rejected." (BR, p. 24) Staff agrees.

Conclusion

There is nothing in Chapter 364 that prohibits expanded interconnection for switched access. However, there are certain prohibitions as to the extent which expanded interconnection for switched access can be implemented. Pursuant to the statutory provisions of Sections 364.335(3) and 364.337, Florida Statutes, AAVs are prohibited from interconnecting with the LEC switch for the provision of switched access. AAV's can provide transport of switched traffic between a single IXC's points of presence.



ISSUE 7: Does a physical collocation mandate raise federal or state constitutional questions about the taking or confiscation of LEC property?

RECOMMENDATION: Although a physical collocation mandate may raise federal or state constitutional questions about the taking or confiscation of LEC property, it does not necessarily mean that there is a constitutional violation. There is no need for the Commission to determine whether there is an actual taking of LEC property if the Commission decides not to implement a mandatory physical collocation policy as discussed in Issue 8.

POSITION OF PARTIES

INTERMEDIA: Yes, given federal precedent. ICI nevertheless maintains that mandated occupation of used and useful LEC property for the very purpose for which it has been declared used and useful--i.e. provision of telecommunication service--is not a taking under a regulatory scheme that creates a monopoly for the LEC and provides both due process and fair compensation for the occupation.

ALLTEL: No position.

AT&T: The recent ruling of the United States Court of Appeals for the D.C. Circuit held that the FCC's physical collocation mandate did constitute an impermissible taking under federal law.

FCTA: No. The takings analysis set forth in the Final Order issued in Phase I of this proceeding correctly addressed this issue.

GTEFL: Yes. Mandatory physical collocation is a taking of LEC property in violation of the United States and Florida constitutions. Virtual collocation standards that are effectively equivalent to a physical collocation mandate are also constitutionally impermissible.

IAC: No position.

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

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

SPRINT: No position.

TELEPORT: The D.C. Circuit Court of Appeals' decision addressed the federal constitutional issues regarding physical collocation. A virtual collocation mandate does not raise federal or state constitutional questions concerning the taking or confiscation of LEC property.

TIME WARNER: Although the takings analysis set forth in the Final Order issued in Phase I of this proceeding correctly addressed this issue, "substantial constitutional questions" were found to exist with the FCC's physical collocation mandate. Policy considerations argue against incompatible interstate and intrastate collocation arrangements.

UNITED/CENTEL: Yes. Mandated physical collocation constitutes an unlawful taking of the Companies' property. There is nothing in the Florida Constitution or state statutes, including Chapter 364, Florida Statutes, that would legitimize mandated physical collocation in Florida.

OPC: Yes, federal courts have found mandated physical collocation to be a taking.

STAFF ANALYSIS: The Commission decided in Phase I to require LECs to provide physical collocation to all interconnectors upon request as envisioned by the FCC and also allowed the interconnectors to opt for virtual collocation if desired. See Order No. PSC-94-0832-PCO-TP, issued March 10, 1994. The Commission also ordered other requirements to implement its decision. Although not bound by any interstate policy, the Commission's Phase I decision was essentially consistent with the FCC's decision on most issues. The Commission found that unified plans would help prevent collocators from shopping between state and federal tariffs and would remove incentives for misreporting the jurisdictional nature of the traffic.

The parties filed numerous motions for reconsideration of the Phase I order.

On June 10, 1994, the United States Court of Appeals for the District of Columbia Circuit issued an order stating that it would vacate in part the first two of the FCC's expanded interconnection orders on the grounds that the FCC did not have express statutory authority under the Communications Act of 1934, as amended, to require the LECs to provide expanded interconnection through physical collocation. Bell Atlantic

Telephone Companies, et al. v. Federal Communications Commission, et al., 24 F.3rd 1441 (D.C. Cir. 1994) The court vacated the orders insofar as they required physical collocation; in all other respects, the orders were remanded to the FCC for further proceedings.

On July 14, 1994, the FCC adopted an order modifying its policy so that it is consistent with the Bell Atlantic decision. See Memorandum Opinion and Order, Issued July 25, 1994, CC Docket 91-141. The FCC required the LECs to provide expanded interconnection through virtual collocation unless the LEC chooses to offer physical collocation. If the LEC chooses to offer physical collocation, it is then exempted from the mandate to provide virtual collocation. However, once the physical space has been exhausted, the LEC must then offer virtual collocation.

The parties filed supplemental legal briefs in Phase I regarding the Bell Atlantic decision. Because the Commission believes that Phase I and Phase II should be consistent, the Commission stayed the Phase I order until after a decision has been made in Phase II so that the parties and staff could analyze the Bell Atlantic decision as well as the policy implications of the FCC's July 14th order. See Order No. PSC-94-1102-FOF-TP. All outstanding motions for Phase I are held in abeyance until a decision has been made for Phase II. In addition, the parties have an opportunity to address the policy implications of the Court of Appeals' decision in Issue 23A.

In Bell Atlantic, the Court of Appeals vacated in part the FCC's expanded interconnection orders on the grounds that the FCC did not have the authority under the Communications Act of 1934 to require LECs to provide expanded interconnection through physical collocation. Some parties assert that this decision holds that the FCC's mandatory physical collocation policy is an unconstitutional taking. Staff believes that these parties have mischaracterized the decision. Although the court is concerned whether there is a taking, it does not actually rule that the policy is an impermissible taking under the Fifth Amendment of the U.S. Constitution.

Petitioners' brief, in places, appears to argue that even if the Commission had authority to impose physical co-location we must nonetheless decide whether that imposition inflicted a "taking." In fact we have no power to do so... The only question we consider is

whether the orders under review were indeed duly authorized under law. (Slip opinion, at 9, emphasis added)

The FCC discusses the Bell Atlantic decision in its July 14th order stating that the "court's core finding ...was that Section 201(a) did not 'grant third parties a license to exclusive physical occupation of a section of the LECs' central offices.'" The FCC also noted that the court refused to grant it the deference normally accorded agencies, because it believed that such a physical occupation "would seem necessarily to 'take' property" under the Fifth Amendment standard established in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426 (1982). The FCC does not share the court's opinion that mandatory physical collocation requirements constitute a "taking". Nevertheless, the FCC states that the factual differences between the mandatory physical regime at issue in Bell Atlantic and the modified requirements it has adopted in its July 14th order are distinguished from the facts of Loretto.

In Loretto, the Supreme Court held that a New York statute that required landlords to permit cable television companies to install facilities on their buildings effected a Fifth Amendment taking of the landlords' property for which just compensation was due. The Court relied upon as authority for taking analysis based upon an ad hoc factual inquiry of 1) the economic impact of the regulation; 2) the extent to which it interferes with investment-backed expectation; and 3) the character of the governmental action. Loretto is also relied upon for the proposition that a permanent physical occupation represents a per se taking and that an ad hoc inquiry is only reached in the absence of such a permanent physical occupation.

Staff maintains that the Commission's holding in Phase I that a mandatory physical collocation standard violated neither the federal nor state constitution is proper. The same rationale could support a Commission mandate for Phase II. The Commission's analysis should not be altered by the Bell Atlantic decision. Contrary to GTEFL and Southern Bell's assertions, the Court of Appeals did not decide whether there was a taking under the Fifth Amendment; rather, the court clearly stated it had no power to do so. Though the court appeared to be persuaded by Loretto, the court used heightened scrutiny to question whether the FCC had the statutory authority to mandate a physical collocation requirement. The Commission held in Phase I that property dedicated to a public purpose is subject to a different standard when, pursuant to statutory authorization, a regulatory

body mandates certain uses of that property in furtherance of its dedicated use. Such statutory authorization is provided by Chapter 364, Florida Statutes, in for example, the following: Section 364.16, Florida Statutes, which provides for the Commission to regulate interconnection; Section 364.01, Florida Statutes, which sets forth the general powers of the Commission; and Section 364.15, Florida Statutes, which gives the Commission the authority to compel improvements to and changes in any telecommunications facility. Since the court in the Bell Atlantic did not decide whether there was a taking under the Fifth Amendment and since Chapter 364, Florida Statutes, provides the appropriate statutory authority for mandating a physical collocation requirement for expanded interconnection, staff asserts that the Commission's analysis is proper.

There is, however, no need for the Commission to determine whether there is a taking of LEC property if the Commission decides not to implement a mandatory physical collocation policy as discussed in Issue 8. Instead, should the Commission follow the FCC's modification and implement a mandatory virtual collocation policy for expanded interconnection for switched access, in no way would such a policy constitute a taking of property. Staff agrees with the FCC's analysis set forth in the July 14th Order. Under virtual collocation, unlike physical collocation, interconnectors have no right to enter LEC-owned premises or to install their own equipment at such locations. Rather, the LECs purchase or lease equipment designated by the interconnector and install, maintain, and repair this equipment in their central offices. An expanded interconnection requirement, that LECs dedicate circuit terminating equipment to particular customers, may affect the use to which LECs can apply its property, but it does not constitute a physical occupation of LEC property.

If the Commission follows the FCC's virtual collocation mandate including the option of allowing LECs to be exempt from virtual collocation requirements if they voluntarily choose to implement expanded interconnection for switched access through physical collocation, the choice to physically collocate would not violate Loretto, because the LECs would have the choice to incur physical collocation obligations. GTEFL is concerned that if the Commission opts for mandatory virtual collocation, that it avoid crafting standards that would "suffer the same constitutional infirmities as mandatory physical collocation." (Brief, p 17) Specifically, GTEFL urges the Commission to reject Teleport's and FCTA's positions that virtual collocation should be technically, operationally and economically comparable to

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

physical collocation from the interconnectors point of view, which is addressed in Issues 8 and 14.

Thus, although a physical collocation mandate may raise federal or state constitutional questions about the taking or confiscation of LEC property, it does not necessarily mean that there is a constitutional violation. Staff recommends that there is no need for the Commission to determine whether there is a taking of LEC property if the Commission decides not to implement a mandatory physical collocation policy as discussed in Issue 8.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

ISSUE 8: Should the Commission require physical and/or virtual collocation for switched access expanded interconnection?

RECOMMENDATION: The Commission should require the LECs to provide virtual collocation for switched access expanded interconnection to all interconnectors upon request. LECs will be exempted from this requirement in offices where they opt to provide physical collocation; once space for physical collocation is exhausted, the LEC must provide virtual collocation. [REITE]

POSITION OF PARTIES

INTERMEDIA: If in response to recent federal precedent this Commission determines that physical collocation is no longer the appropriate standard, then it should prescribe standards for virtual collocation that ensure the latter is at least comparably efficient as the former.

ALLTEL: No position.

ATT-C: Consistent with the action taken by the FCC on July 14, 1994, the Commission should order the LECs to provide switched access expanded interconnection through virtual collocation except in offices in which the LECs choose to offer physical collocation.

FCTA: If the Commission does not mandate physical collocation, it should mandate virtual collocation that is technically, economically, administratively and operationally equivalent to physical collocation. Physical collocation arrangements should be permitted on a negotiated basis.

GTEFL: The Commission should avoid mandates in favor of a policy permitting LECs and interconnectors to negotiate their own interconnection arrangements. In the alternative, the Commission should require virtual collocation.

IAC: No position.

SOUTHERN BELL: This Commission should not require either form of collocation. Instead, each LEC should have the option of providing either physical or virtual interconnection arrangements. This can be accomplished by ordering collocation on the same terms as did the FCC on remand.

SPRINT: In light of the recent United States Court of Appeals for the District of Columbia Circuit decision regarding physical

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

collocation, this Commission should focus on the merits of mandatory virtual collocation requirements.

TELEPORT: The Commission should allow LECs to negotiate with interconnectors to establish physical collocation arrangements. In the absence of such negotiations, the Commission should mandate that the LECs provide virtual collocation which is technically, operationally and economically comparable to physical collocation.

TIME WARNER: The FPSC should mandate virtual collocation that is technically, economically, administratively and operationally equivalent to physical collocation. A standard of reasonableness is also necessary to prevent incumbent LECs from building inefficiencies into collocation arrangements that will impede competition. Physical collocation arrangements should be permitted on a negotiated basis.

UNITED/CENTEL: No. United and Centel are opposed to being unconditionally required to provide any specific form of collocation, either physical or virtual, for switched access expanded interconnection. Please see the Companies' Response to Issue 23a.

OPC: The commission should require virtual collocation.

STAFF ANALYSIS: The parties which took positions can be summarized in the following manner:

GTEFL, SBT, and United/Centel all believe that the Commission should not mandate any particular form of interconnection but instead should allow the LEC and the interconnector to negotiate their own arrangement.

ICI, FCTA, Teleport, and Time Warner state that this Commission should mandate virtual collocation that is technically, economically, administratively and operationally equivalent to physical collocation. However, ICI and FCTA present this position only if physical collocation is not the appropriate standard.

ATT-C, Sprint and OPC all assert that the Commission should order mandatory virtual collocation.

The FCC defines physical collocation as an offering that enables an interconnector to locate its own transmission equipment in a segregated portion of a LEC central office. The

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

interconnector pays a charge to the LEC for the use of that central office space, and may enter the central office to install, maintain, and repair the collocated equipment. (FCC Report & Order, Released 7/25/94, para 7)

Virtual collocation is an offering in which the LEC owns (or leases) and exercises exclusive hands-on control over the transmission equipment, located in the central office, that terminates the interconnectors circuits. The LEC dedicates this equipment to the exclusive use of the interconnector and provides installation, maintenance, and repair services on a non-discriminatory basis. The interconnector has the right to designate its choice of central office equipment, and to monitor and control the equipment remotely. (Monitoring and control is the ability to track, reconfigure, and supervise the operation of communication circuits terminating in such equipment from a remote location). The LEC connects this equipment to the interconnector's circuit outside the central office, with an interconnection point between the LEC-owned facilities and interconnector-owned facilities as close as possible to the office. (FCC Report & Order, Released 7/25/94, para 7)

On June 10 1994, the United States Court of Appeals for the District of Columbia Circuit issued an order stating that it would vacate in part the first two of the FCC's expanded interconnection orders on the grounds that the FCC did not have express statutory authority under the Communications Act of 1934, as amended, to require the LECs to provide expanded interconnection through physical collocation. Bell Atlantic Tel. cos. et al. v. F.C.C. et al., 24 F.3rd 1441 (D.C. Cir. 1994) The court vacated the orders insofar as they required physical collocation; in all other respects, the orders were remanded to the FCC for further proceedings.

On remand, the FCC mandated that all Tier 1 LECs make virtual collocation available, under tariff, to all interconnectors that request it. Concerning physical collocation, it stated that LECs will be exempted from a mandatory virtual collocation requirement "at any central office or offices for which the LEC opts to offer under tariff expanded interconnection through physical collocation." (FCC Report & Order, Released 7/25/94, para 31)

Tier 1 LECs are defined as those companies having annual revenues from regulated operations of \$100 million or more. The Tier 1 LECs in Florida include GTEFL, SBT and United/Centel. As mentioned above, each of these companies' primary position is

that this Commission should allow negotiated collocation, without mandating any particular type. (Beauvais TR 209-210, Denton TR 374-375, Poag TR 794-795) However, GTEFL's witness expressed their position that if the Commission declines to permit negotiated collocation, then the appropriate alternative is a policy of mandatory virtual collocation as implemented by the FCC. (Beauvais TR 246) SBT's witness Denton concurs that the Commission should follow the FCC's remand model of mandated virtual collocation with a option to provide physical. They believe this allows the LEC to choose which type of collocation to offer. (TR 31, 377)

United/Centel state that they are not opposed to providing collocation. They are, however, "opposed to being unconditionally required to provide any specific form of collocation, either physical or virtual." (Poag TR 794) United is unique in that it has been negotiating collocation arrangements for some time now. (Poag TR 794-795) It must be pointed out that these collocation arrangements were not for expanded interconnection as envisioned by the FCC and this Commission, but for central office space leased by outside parties. Witness Poag states that collocation should be treated as a line of business and negotiated on an arms-length basis with terms and conditions which are beneficial to both parties. (TR 795) He asserts that there are equal and compelling incentives for LECs and AAVs to negotiate mutually advantageous collocation arrangements. The AAVs have the opportunity to reach a larger customer base and the LECs are presented with a business opportunity to lease floor space. (Poag TR 802-803)

Staff is concerned about allowing the LECs to negotiate collocation arrangements when the majority of the bargaining power would be with the LEC. FCTA witness Smith asserts that the LEC is in control of the facilities and has the dominant position in negotiations. (TR 577(3)) SBT witness Denton admits that whoever controls a particular location can indeed limit a competitor's access if the terms and conditions for collocation are not formally established. (TR 929, EXH 23 p.16) Staff finds it peculiar that GTEFL witness Beauvais is already advancing arguments against complaints of LEC price gouging for floor space that is priced based on market value. (TR 235) Staff believes that AAVs, especially smaller ones, would lack the necessary market power to negotiate an equitable arrangement with the LEC, and we do not recommend that individual negotiation for collocation arrangements be ordered by the Commission.

Teleport, FCTA and Time Warner all believe that if the Commission mandates virtual collocation, it should be technically, operationally, economically and administratively comparable to physical collocation. (Smith TR 574-575, Andreassi TR 731) Although FCTA's primary position is to have a physical collocation mandate, it recognizes the circumstances that led to the FCC's change to a virtual collocation mandate. FCTA witness Smith states that a virtual collocation standard should give interconnectors what they would have received under physical collocation. (TR 574) Teleport's witness Andreassi echoes this belief and adds that a virtual collocation standard that is comparable to physical collocation, will protect the "critical competitive, operational and financial characteristics of the interconnector's services." (TR 727-728)

In the federal proceedings, the AAVs asked the FCC to require that virtual collocation be technically, operationally, economically and administratively comparable to physical collocation. The FCC found that this standard would impose burdens on the LECs that are unnecessary to protect the interconnectors' interests. (FCC Report & Order, Released 7/25/94, para 43) They found that interconnectors acquiesce to LEC performance standards on the LEC circuits to which the interconnector circuits are attached. Also, "interconnectors can achieve a high level of reliability through the use of electronics with redundant components and remote monitoring and control rather than through expedited repair procedures." (FCC Report & Order, Released 7/25/94, para 62) Staff views the interconnectors' request for special standards as tariffing issues. The currently proposed interconnection tariffs contain terms and conditions that are unique to the service and applicable to any and all customers that choose to buy from those tariffs. We are willing to entertain any specific proposals from the AAVs for reasonable additions to the LECs' tariffs.

ATT-C and Sprint believe this Commission should adopt interconnection rules that are consistent with those prescribed by the FCC. (Guedel TR 140, EXH 8 p.6, Rock TR 650) Many of the parties recognize that there is a need for compatibility between state and interstate policies. (Guedel TR 133, Beauvais TR 225, Denton TR 375, Rock TR 652, Andreassi TR 715, Poag TR 784) Sprint witness Rock states that the same collocated facilities and equipment will be used to interconnect interstate and intrastate traffic. (TR 652) GTEFL's witness Beauvais believes that having a unified plan will limit administrative costs and remove some of the incentives for misreporting the jurisdictional nature of the traffic. (TR 225) United/Centel witness Poag builds

DOCKET NO. 921074-TF
NOVEMBER 18, 1994

on this concern by stating that since the user has the ability to send interstate and intrastate traffic across the same facility there is an incentive to shop tariffs and report traffic accordingly. (TR 784) Staff believes this argument has merit because to the interconnector desiring collocation, jurisdiction does not make a difference when considering the equipment and central office facilities needed. Interconnectors will buy out of whichever tariff is more attractive to them.

Consistency and coordination with the federal expanded interconnection policy were important factors in determining the type of interconnection arrangement to order in Phase I of this docket. The record indicates that the parties believe consistency is just as important in this phase. The LECs believe consistency can be achieved through individually negotiated arrangements. As mentioned above, staff believes negotiated arrangements have the potential to be one-sided, since the LEC owns and controls the central office. Other parties state that the Commission should mirror the FCC's mandate of virtual collocation but only if it is operationally, technically administratively and economically comparable to physical collocation, which staff believes are all tariff-related issues and should be addressed at the time a proposed interconnection tariff is filed. Therefore, staff is recommending that the Commission follow the FCC's guidance and require the LECs to provide virtual collocation for switched access expanded interconnection to all interconnectors upon request. LECs will be exempted from this requirement in offices where they opt to provide physical collocation. Once space for physical collocation is exhausted, the LEC must provide virtual collocation.

DOCKET NO. 921074-TF
NOVEMBER 18, 1994

ISSUE 9: Which LECs should provide switched access expanded interconnection?

APPROVED STIPULATION:

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

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

STAFF ANALYSIS: This stipulation was approved at the August 22, 1994 hearing. (TR 17) Therefore, this issue is resolved.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

ISSUE 10: From what LEC facilities should expanded interconnection for switched access be offered? Should expanded interconnection for switched access be required from all such facilities?

Approved Stipulation:

Expanded interconnection shall be offered out of all LEC offices, which include central offices, end offices, tandems, and remotes, that are used as rating points for switched access services and have the necessary space and technical capabilities. Initially, expanded interconnection shall be offered out of those central offices that are identified in the proposed tariffs in the interstate jurisdiction. Additional offices shall be added within 90 days of a written request to the LEC by an interconnector.

STAFF ANALYSIS: This stipulation was approved at the August 22, 1993 hearing. (TR 17, 18) Therefore, this issue is resolved.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

ISSUE 11: Which entities should be allowed expanded interconnection for switched access?

APPROVED STIPULATION:

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

STAFF ANALYSIS: This stipulation was approved at the August 22, 1994 hearing. (TR 17) Therefore, this issue is resolved.

ISSUE 12: Should collocators be required to allow LECs and other parties to interconnect with their networks?

RECOMMENDATION: No. The Commission should not impose such a requirement at this time. Instead, the Commission should encourage the collocators to allow LECs and other parties to interconnect with their networks. If a dispute arises, the Commission should review the request to interconnect on a case-by-case basis. [REITE]

POSITION OF PARTIES

INTERMEDIA: Yes. As in Phase I, Intermedia is willing to provide reciprocal interconnection arrangements for LECs or other parties, under similar terms and conditions as those established by the LECs.

ALLTEL: No position.

ATT-CI: No. The purpose of expanded interconnection is to facilitate the entry of potential competitors into the monopoly preserves of the LECs. Because none of those potential competitors possess a monopoly, interconnection requirements are not necessary, and, in fact, would tend to frustrate rather than encourage the development of competition.

FCTA: No. Consistent with FCC treatment and the Commission's Phase I decision, such a mandate would be premature and would serve no purpose.

GTEFL: Yes. The consumer benefits available through expanded interconnection will be suppressed if the Commission declines to adopt a policy of reciprocal collocation.

IAC: No position.

SOUTHERN BELL: Yes. Reciprocity under the same terms and conditions as required for LECs should be part of any collocation ordered by this Commission. If reciprocity is not ordered then, in certain instances, end users may likely be denied the full benefits of interconnection.

SPRINT: No. Collocators should not be required to offer interconnection but should be allowed to voluntarily negotiate individual arrangements. However, the Commission should require that any individual arrangements negotiated be made public and made available to all interested parties at the same location.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

TELEPORT: No. As monopoly providers of essential bottleneck facilities, LECs need to be required to provide expanded collocation to interconnectors. However, non-dominant, competitive carriers need no such requirement. As competition for switched services develops, a competitor would be foolish to reject a collocation request and the associated revenues.

TIME WARNER: No. At this juncture, such a mandate would be premature and would serve no purpose.

UNITED/CENTEL: With respect to LEC interconnection with interconnectors' networks, interconnection reciprocity is appropriate. However, interconnection within the central office between two expanded interconnection customers is appropriate only if the interconnectors use LEC facilities and service to accomplish the interconnection.

OPC: Yes.

STAFF ANALYSIS: This issue addresses whether or not collocators should be required to offer interconnection to the LECs or other parties.

ICI, GTEFL, Southern Bell, United/Centel and OPC all believe that collocators should be required to offer interconnection to LECs and other parties.

ATT-C, Sprint, Teleport, Time Warner and FCTA all state that reciprocal collocation requirement is not needed.

ALLTEL and IAC chose not to take a position on this issue.

ICI states that the Commission should require reciprocal interconnection and that Intermedia is willing to provide it to LECs and other parties that wish to use their network. They point out that the reciprocal interconnection arrangements will be offered under similar terms and conditions as those established by the LECs. However, collocation will be limited due to the availability of space. (Metcalf' EXH 4, p.2)

The LECs favor a reciprocal interconnection requirement. (Beauvais TR 227-228, Denton TR 368-369, Poag EXH 46 p.8) GTEFL believes that it is necessary to foster competition in the marketplace and that everyone should be subject to the same rules and requirements. GTEFL witness Beauvais asserts that such a requirement would be consistent with "symmetrical treatment of all parties in the marketplace." He later states "if the AAVs

truly have a better mousetrap to offer to the marketplace than do the LECs in terms of transport facilities, then there is no reason it should be denied to any entity in the marketplace." (TR 227) Witness Beauvais believes that if AAV costs are lower than the LEC then the LEC should not be precluded from purchasing inputs from the AAV to provide services to its customers. (TR 228) SBT witness Denton echoes GTEFL's position by stating that reciprocity under the same terms and conditions as required for LECs should be a part of any interconnection arrangement in Florida. He states that, without reciprocal interconnection, customers may be denied the option of purchasing LEC services at the most competitive price. (TR 368-369)

ATT-C, Sprint, Teleport, Time Warner and FCTA all say that reciprocity should not be a requirement. ATT-C witness Guedel does not believe that collocators should be ordered to allow LECs to interconnect with their networks. He testifies that expanded interconnection was designed by the FCC to initiate competition into the LEC monopoly environment. He elaborates that because none of the potential competitors possesses a monopoly, interconnection requirements are not necessary. (Guedel TR 125, 141) Witness Guedel is quick to point out that ATT-C does not oppose reciprocal interconnection, but only opposes having it mandated. (TR 145) Teleport's witness Andreassi concurs with witness Guedel's position, but adds that as competition develops, a non-dominant competitive carrier would be foolish to reject a collocation request and the associated revenues. His reasoning is that the potential interconnector would simply move on to the next provider. (TR 721)

Staff would note FCTA raised the argument in their brief that the LECs ability to collocate with cable television facilities is governed by a federal scheme enacted by Congress. FCTA, therefore, asserts that this Commission is preempted from imposing its own expanded interconnection requirements upon collocators that are cable operators. Although staff does not agree with the FCTA's argument, we do not believe there is a need to address this position at this time because staff is not recommending that reciprocal interconnection be mandated nor do we believe there is sufficient support in the record.

The arguments advanced by the non-LECs follow the FCC's line of reasoning when it commented on reciprocity. The FCC asserts that mandated expanded interconnection for the LECs is necessary because LECs are the dominant carriers and control facilities to which other parties need access in order to provide service. On mandating reciprocity, it states that there is no reason to

DOCKET NO. 921074-TF
NOVEMBER 18, 1994

impose expanded interconnection requirements on parties that lack market power and do not control bottleneck facilities. (FCC Report & Order, Released 7/25/94, para 104)

Staff agrees that AAVs do not have as much freedom to discriminate among customers as would a dominant carrier such as a LEC. We believe AAVs would have an incentive to explore additional revenue streams to help fund their network goals and advance their company in the market. Staff believes that in principle, symmetrical treatment would be appropriate in a more mature environment. However, we do not believe mandated symmetrical treatment is appropriate at this time because the market itself is not symmetrical. The LECs are currently the dominant providers of local access services and the owners/controllers of the bottleneck facilities. Therefore, staff does not believe it is necessary at this time to mandate that collocators permit LECs and other parties to interconnect with their networks. Instead, we recommend that the Commission encourage collocators to allow LECs and other parties to interconnect with their networks. If a dispute arises, the Commission should review the request to interconnect on a case-by-case basis.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

ISSUE 13: Should the Commission allow switched access expanded interconnection for non-fiber optic technology?

APPROVED STIPULATION:

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

STAFF ANALYSIS: This stipulation was approved at the August 22, 1994 hearing. (TR 17) Therefore, this issue is resolved.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

ISSUE 14: Should all switched access transport providers be required to file tariffs?

RECOMMENDATION: No. Staff recommends that only LECs should file tariffs for switched access transport. [CHASE]

POSITION OF PARTIES

INTERMEDIA: No.

ALLTEL: No position.

ATT-C: No position.

FCTA: No. Consistent with the Phase I decision, only incumbent LECs should be required to file tariffs. Unlike the LECs, AAVs have no dominant position over their customers that can be abused in contract negotiation. AAV customers are typically sophisticated users who do not need expansive regulatory protection.

GTEFL: All switched access transport providers should be treated equally. If one type of entity is required to file tariffs, all should be required to do so. A unilateral tariffing requirement for just the LECs may weaken price competition, to the detriment of the consumer.

IAC: Yes.

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

SPRINT: Yes. Sprint believes non-dominant carriers could potentially affect the market with discriminatory pricing. In addition, given that interexchange carriers may be an interconnector and are required to file tariffs, all interconnectors should be required to file tariffs to prevent discrimination.

TELEPORT: No. Only LEC providers which have control over bottleneck facilities should be required to file tariffs.

DOCKET NO. 921074-TF
NOVEMBER 18, 1994

TIME WARNER: No. Only incumbent LECs should be required to file tariffs.

UNITED/CENTEL: Yes. United and Centel advocate that any party, whether dominant or non-dominant, offering transport services be subject to tariffing requirements. Non-dominant providers have more streamlined tariffing procedures before the FCC, but must tariff nonetheless. The tariffing requirement should be no less in Florida.

OPC: No position.

STAFF ANALYSIS: In Phase I of this docket the Commission required only Tier 1 LECs to file tariffs for private line and special access service expanded interconnection. The Commission decided that less, not more, regulation was appropriate. (EXH 1, Phase I Order, pp.29-30) This issue addresses which providers of switched access transport should be required to file tariffs.

IAC, Sprint, and United/Centel assert that any party providing switched access services should be subject to tariffing requirements. Intermedia, FCTA, Teleport, and Time Warner argue that AAVs and other interconnectors should not be required to file tariffs, but all companies that are currently under tariff mandates should continue to file tariffs. Southern Bell and GTEFL advocate that no party, LEC or AAV, should be required to file tariffs. ALLTEL, ATT-C, and OPC took no position.

Southern Bell asserts that local exchange companies and other transport providers should not be required to file tariffs because these decisions should be left to the transport provider. Southern Bell states that federal and state statutes and rules requiring tariffs should be removed, so that Southern Bell could have the same pricing flexibility that is enjoyed by its competitors. (EXH 24, p.40)

Even though GTEFL believes in theory that no provider should be required to file tariffs for switched access services, it argues that all providers of switched access should be treated equally, and if the Commission retains tariff requirements for the LECs, then AAVs should also be subject to these same requirements. GTEFL also argues that a tariffing requirement imposed only on the LECs may weaken price competition, to the detriment of the consumer. (Beauvais TR 232-233) In addition, witness Beauvais argues that tariffing by all providers could benefit consumers:

Tariffs filed by all companies at a single location clearly facilitate comparison shopping among consumers by minimizing the search costs. Ready access to this information will become more important as AAVs and others begin to serve smaller customers. This availability of information in turn contributes to a more efficient marketplace. Thus, those parties opposing the filing of tariffs are mistaken from a current public policy perspective. Any firm offering transport and/or access services in the market today should be required to file tariffs with the Commission. (TR 870)

IAC asserts that all providers of switched access should be required to file tariffs because there is a significant danger of discrimination in the market, and the only means that one has to detect and prevent discrimination is tariffing. IAC states that "this standard eliminates any justification for the LECs being allowed the customer-specific discrimination that is the essence of a CSA." (Gillan TR 966) IAC points out that AAVs are required to file tariffs for their services at the interstate level. (TR 626)

United/Centel argue that any party, whether dominant or non-dominant, offering transport services should be subject to tariffing requirements because it could be beneficial to many of the parties involved. It asserts that non-dominant providers have more streamlined tariffing procedures before the FCC, but must tariff nonetheless, and that the tariffing requirement should be no less in Florida. (Poag EXH 46, 5) United/Centel also states that not requiring the non-dominant carriers to file tariffs would give them some advantage in the market place. If non-dominant carriers were required to file tariffs, "it would give us an opportunity to follow up in the market place and see what they were doing and how we should position ourselves, same as they look at tariffs and see how they should position themselves for the initial foot-in-the-door entry." (Poag EXH 44, 30) In addition, United/Centel asserts that it may benefit customers and even the Commission in terms of complaint processing because the tariff could be used to determine the validity of the complaint. (Poag TR 812)

Sprint states in its post-hearing brief that all providers of switched access services should be required to file tariffs because the non-dominant carriers could potentially affect the

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

market with discriminatory pricing, and it supports GTEFL's argument that a tariff is an excellent source of information about the state of service in the marketplace. (Beauvais TR 262-263) However, Sprint witness Rock argues in a response to a staff interrogatory that carriers which do not have monopoly power, should not be required to comply with rules that are only appropriate for monopoly providers. (EXH 40, 5)

Intermedia argues that only the incumbent LECs, with dominant market power, should be required to file tariffs for switched access services. (Metcalf TR 83) Intermedia also asserts that the Commission determined in Phase I that AAVs and other interconnectors need not file tariffs for special access and private line services and the Commission advocated less, not more, regulation. (Phase I Order, 30)

Teleport states that only LEC providers which have control over bottleneck facilities should be required to file tariffs. Even with the advent of local transport competition, LECs will possess a dominant market share for the foreseeable future; therefore, it is appropriate to continue tariffing their switched access services. Teleport argues that AAVs are not presently required to file tariffs in Florida and that:

The Commission determined in Order No. 24877 that customers using the services of AAVs understand that they are dealing with a competitor to the LECs and can choose to go back to using the LEC if they are dissatisfied with the AAV. (This is particularly true in the case of local transport, where the primary customers are interexchange carriers.) The Commission concluded the filing of tariffs would provide limited benefit. ...Moreover, AAV rates are constrained by the rates of the LECs--an AAV must charge no more than the LEC if it expects to attract customers -- and thus by regulating the prices of LECs the Commission is already indirectly regulating the prices of AAVs. (Andreassi EXH 41, 4-5)

If the Commission does require AAVs to file tariffs, Teleport asserts that it should adopt a streamlined filing procedure such as rate bands, a shortened notice period and no requirement for cost support. (EXH 41, 5)

Time Warner and FCTA assert that only incumbent LECs should be required to file tariffs because competitive pressures generally will prevent competitors from pricing services higher than the LEC. Time Warner and FCTA agree with witness Metcalf of Intermedia who asserts that the LEC tariffs will establish a price ceiling, the way ATT-C has established a price ceiling for long distance services. (Metcalf TR 83)

About half of the parties are in favor of tariffing by all providers of switched access transport, while the other half believe that only the LECs should file tariffs for switched access transport. Generally, the LECs state that everyone should file tariffs because they are required to and it is an information source for consumers. The AAVs generally believe that tariffs are unnecessary because they would not have any incentive to price above the LECs. In the previous two decisions that the Commission made regarding tariff requirements of the AAVs, it determined that AAVs or AAV-like entities should not be required to file tariffs. (Andreassi EXH 41, 4-5; Phase I Order, 29-30)

Parties such as GTEFL and United/Centel believe that the tariffs are necessary, but also benefit the consumer. (Beauvais TR 870; Poag TR 812) IAC takes it one step further by arguing that tariffs are the only means to detect and prevent pricing discrimination. (Gillan TR 626) Staff believes that although these arguments make tariffs sound like good consumer protection devices and protections against price discrimination, they are not necessary because the purchasers of switched access are interexchange companies (IXCs) who are very knowledgeable of the market. Because of the IXC's knowledge of the access market, staff believes the IXC would choose to remain with the LEC or choose another AAV if its current AAV attempts to price drastically different than other AAVs or the LEC. In addition, IXCs might choose to seek an AAV certificate and provide their own transport.

Staff agrees with witness Andreassi's argument that "AAV rates are constrained by the rates of the LECs--an AAV must charge no more than the LEC if it expects to attract customers -- and thus by regulating the prices of LECs the Commission is already indirectly regulating the prices of AAVs." (Andreassi EXH 41, 4-5) In addition, Intermedia and Time Warner also state LEC tariffs will establish a price ceiling the way ATT-C has established a price ceiling for long distance services. (Metcalf TR 83) Staff believes that because tariffing by the LEC creates a price ceiling, AAVs would have the incentive to underprice the

LECs and possibly to discriminate against IXCs. However, staff does not believe that the AAVs have the ability to discriminate against the IXCs because of the limited size of AAV networks, differing costs than the LEC, and the IXCs' knowledge of the access market.

In addition, staff recognizes that in some markets and for some of the services, AAVs will be able to acquire the LECs' business. Staff believes this because the AAV might have the ability to price a certain service lower than the LEC, due to lower costs and the configuration of its network. However, staff believes that AAVs will not be able to take all of the LECs' business by underpricing them for a couple of reasons. First, for some transport services the LEC will still be able to provide the lowest price. Second, staff is recommending approval of zone density pricing in issue 18, thus giving the LECs the ability to respond to the competitive pricing by the AAVs.

Staff also believes that the Commission should be consistent with what it recommends in issue 12 (reciprocal interconnection). In issue 12, staff is recommending that the Commission should encourage, but not order reciprocal interconnection. Therefore, with no required reciprocal interconnection, there would be no need for AAVs and other interconnectors to file tariffs. If AAVs were required to file tariffs, then the Commission would essentially be ordering reciprocal interconnection because tariffing forces a company to provide the service at the same prices, terms and conditions to all similarly situated customers.

Some of the parties argue that since the FCC requires tariffing by AAVs, this Commission should also require tariffing. Staff believes that the Commission should not require tariffing by the AAVs because of the reasons discussed above. Moreover, in the Commission's previous two decisions regarding tariff requirements of the AAVs, it determined that AAVs or AAV-like entities should not be required to file tariffs.

Based on what staff is recommending in issue 12 and the discussion above, staff believes that the Commission should not change its policy regarding tariffing for AAVs. At this time, staff believes that only LECs should be required to file tariffs for switched access transport. If, over time, the Commission finds that the market becomes competitive to the point tariffing for anyone does not make sense, the Commission may give the LECs more pricing flexibility or in the extreme case, detariff switched access transport. On the other hand, if the Commission

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

finds, through complaints, that AAVs are practicing pricing discrimination and LECs are unable to compete with AAVs (even with pricing flexibility) because of the LEC tariffing requirement, then the Commission may want to consider requiring tariffing for all providers.

ISSUE 17: Should the LECs' proposed intrastate switched access interconnection tariffs be approved?

RECOMMENDATION: Not as filed. Tier 1 LECs filed only illustrative switched access interconnection tariffs based on mandatory physical collocation. Because staff is recommending mandatory virtual collocation in issue 8, all Tier 1 LECs should file actual tariffs which mirror the interstate switched access interconnection tariffs on file with the FCC as of January 1, 1994. However, those standards, terms and conditions that will be adopted in Phase I Final Order that are different than those adopted by the FCC should be included in the tariff. Several of the terms and conditions for special access and private line are under reconsideration. These include checkerboarding, warehousing, and tariffing at the DSO level. These Phase I issues need to become final before the Phase II tariffs can be approved because the terms and conditions for special and switched should, for the most part, be the same.

The LEC-specific switched access interconnection tariffs containing mandatory virtual collocation requirements should be filed 60 days after the Phase I and Phase II Orders are final and all outstanding motions for reconsideration have been decided. In addition, these tariffs should become effective on or after the date the LEC's local transport tariffs (issue 21) become effective. The switched access interconnection tariffs will be reviewed by staff according to the Commission's standard tariff review process and brought back before the Commission for approval. [CHASE]

POSITION OF PARTIES

INTERMEDIA: These tariffs should be approved to the extent that they mirror the LECs' interstate tariffs.

ALLTEL: No position.

ATT-C: While ATT-C would encourage the LECs to offer physical collocation arrangements as originally ordered by the FCC, ATT-C would not oppose the approval of LEC tariffs modified to incorporate the changes that the FCC ordered with respect to interstate interconnection in its action of July 14, 1994.

FCTA: No. Tariffs should only be approved to the extent that they mirror the LECs' interstate tariffs and incorporate the decisions reached in this docket.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

GTEFL: The tariffs should not be approved until the LECs have had the opportunity to revise them to remove physical collocation as the expanded interconnection standard. In addition, expanded interconnection must not be approved in the absence of local transport restructuring.

IAC: No position.

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

SPRINT: No position.

TELEPORT: To the extent that the LECs tariffs offering switched access interconnection, including tandem facilities, mirror their intrastate special access interconnection tariffs, they should be approved.

TIME WARNER: No. Tariffs should only be approved to the extent that they mirror the LECs' interstate tariffs and incorporate the decisions reached in this docket.

UNITED/CENTEL: No. United's and Centel's switched access expanded interconnection tariffs need to be revised to remove the physical collocation requirement.

OPC: No position.

STAFF ANALYSIS: In the Order Establishing Issues in Phase II of this docket, the Tier 1 LECs were required to file illustrative switched access interconnection tariffs based on a mandatory physical collocation requirement. The tariffs were only illustrative because at the time, the LECs had not yet filed actual interstate tariffs. GTEFL, United/Centel, and Southern Bell filed illustrative switched access interconnection tariffs. (Beauvais EXH 16; Poag EXH 48; Hendrix EXH 33) This issue addresses the LECs' illustrative proposed switched access expanded interconnection tariffs.

On remand, the FCC mandated that all Tier 1 LECs make virtual collocation available, under tariff, to all interconnectors that request it. Concerning physical collocation, they state that LECs will be exempted from a mandatory virtual collocation requirement "at any central office

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

or offices for which the LEC opts to offer under tariff expanded interconnection through physical collocation." (FCC Report & Order, Released 7/25/94, para 31) In issue 8 of Phase II in this docket, staff is recommending a mandatory virtual collocation policy that mirrors the FCC's policy. Therefore, based on the above discussion, portions of the illustrative expanded interconnection tariffs for switched access would need to be modified. There was not enough time before the discovery cut-off for staff to request modified tariffs for review.

Intermedia, ATT-C, GTEFL, Southern Bell, Teleport, and United/Centel assert that the LECs' proposed intrastate switched access interconnection tariffs should be approved to the extent they mirror the interstate tariffs which include mandatory virtual collocation. FCTA and Time Warner argue that the tariffs should not be approved until decisions on the other issues in this docket are made. ALLTEL, IAC, Sprint, and OPC take no position on this issue.

GTEFL states that the intrastate tariff needs to mirror the interstate tariff, but should not be approved until its local transport restructure is implemented. GTEFL asserts that based on the Court of Appeals' reversal of the FCC's physical collocation mandate, the LECs should be permitted to revise their tariffs to remove the physical collocation standard. (Beauvais TR 243-44) United/Centel also asserts that its proposed tariffs should be revised to remove the physical collocation requirement. (Poag TR 798-99)

Teleport states that the tariffs should be approved as long as the LEC tariffs include tandem facilities and mirror their intrastate special access interconnection tariffs. (Andreassi TR 723)

Southern Bell argues that since the illustrative tariff filed by Southern Bell mirrors the interstate filing for the same services, it should be allowed to file a final tariff and it should be approved subject to any change arising from this docket. (Hendrix TR 419) Southern Bell urges the Commission to adopt the same standard, mandatory virtual collocation, as the FCC, and thus the tariff should be revised to reflect this change. (Denton TR 375-376)

FCTA and Time Warner agree with Teleport and Southern Bell that the LECs' tariffs should be approved but only if they mirror the interstate tariffs and incorporate the decisions reached in this docket. (Andreassi TR 723; Hendrix TR 419)

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

ATT-C states that it does not oppose approval of LEC tariffs filed to meet the requirements of this Commission's order in Phase I of this docket, or a modification of the Phase I Order consistent with the FCC actions of July 14, 1994 regarding expanded interconnection. (Guedel TR 132-34)

All parties to the docket believe that the switched access interconnection tariffs should either mirror the interstate tariff and be consistent with all other decisions reached in this docket, or they take no position.

The terms and conditions of the illustrative switched access interconnection tariffs filed by the LECs are for the most part appropriate. However, the mandatory physical collocation requirement needs to be revised to reflect a mandatory virtual collocation requirement. In addition, several of the terms and conditions for special access and private line are under reconsideration. These include checkerboarding, warehousing, and tariffing at the DSO level. Checkerboarding is the standard of having vacant space between collocation cages for growth under physical collocation. Warehousing is when AAVs, in order to keep competitors out of a certain central office, order collocation space but do not use it. These Phase I issues need to become final before the Phase II tariffs can be approved because the terms and conditions for special and switched should, for the most part, be the same.

The FCC's Remand Order discusses standards that the new virtual collocation tariff for switched access interconnection must contain. Most of the standards are the same as what was originally ordered under mandatory physical collocation. (FCC Report & Order, Released 7/25/94) The FCC also ordered that if a LEC offers both interstate and intrastate expanded interconnection, it should do so in a manner that satisfies both federal and state requirements to the extent possible, and should provide mechanisms to avoid double payment for facilities used for both interstate and intrastate collocation. (FCC Report & Order, Released 7/25/94, Par. 75) Staff believes that this policy should be adopted by this Commission as well.

Staff recommends that the following standards, terms, and conditions contained in FCC Docket No. 91-141, FCC Report and Order, Released July 25, 1994, should be mirrored in the intrastate filings unless they are inconsistent with what this Commission orders:

1. Equipment Designations
2. Virtual Collocation Through Generally Available Tariffs
3. Installation, Maintenance and Repair Standards
4. Cross-connect element must be tariffed at study-area-wide average rate for both physical and virtual collocation (Must only tariff physical if LEC chooses to offer physical)
5. Virtual collocation arrangements do not involve the reservation of segregated central office space for the use of interconnectors.
6. First-come, first-served space allocation for voluntary physical collocation.
7. If space is exhausted under voluntary physical collocation, virtual collocation must be offered.
8. Charges for central office space, power, environmental conditioning, and labor and materials for installing voluntary physical collocation must be uniform for all interconnectors in each individual central office.
9. Insurance--No liability insurance requirements for virtual collocation, unless LECs make a compelling case otherwise.

Another aspect of this issue is how the switched access interconnection tariffs relate to the restructure of the local transport tariffs. GTEFL witness Lee states that:

It is imperative that the Commission allow the restructuring of the LEC's local transport services in accordance with the FCC's LTR methodology if it also approves expanded interconnection and collocation for switched access. To do otherwise would leave the LECs on an unlevel playing field in which they could not compete fairly with entities like alternative access vendors (AAVs). For example these AAVs would be able to interconnect with the LECs networks and offer lower priced dedicated transport to the IXCs. A LEC must be able to offer similar flat-rated transport options to its customers to be able to have a reasonable chance of retaining traffic on its network. (Lee TR 300-301)

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

United/Centel agree with GTEFL witness Lee that if switched access interconnection is approved, local transport must also be restructured. (Poag TR 799-800) Staff also believes that local transport restructure needs to be approved if expanded interconnection for switched access is approved in order for the LECs to be allowed to offer transport on a flat-rate dedicated basis. Therefore, staff believes that the expanded interconnection tariffs for switched access should not become effective until the restructured local transport tariffs become effective.

Because of the change in policy at the FCC, staff recommends that the illustrative intrastate switched access expanded interconnection tariffs should not be approved as filed. Instead, because staff is recommending mandatory virtual collocation in issue 8, all Tier 1 LECs should file actual tariffs which mirror the interstate switched access interconnection tariffs on file with the FCC as of January 1, 1995. However, those standards, terms and conditions that will be adopted in the Commission's Phase I Final Order that are different than those adopted by the FCC should be included in the tariff. Several of the terms and conditions for special access and private line are under reconsideration. These include checkerboarding, warehousing, and tariffing at the DSO level. These Phase I issues need to become final before the Phase II tariffs can be approved because the terms and conditions for special and switched should, for the most part, be the same.

The LEC-specific switched access interconnection tariffs containing mandatory virtual collocation requirements should be filed 60 days after the Phase I and Phase II Orders are final and all outstanding motions for reconsideration have been decided. In addition, these tariffs should become effective on or after the date the LEC's local transport tariffs (issue 21) become effective. The switched access interconnection tariffs will be reviewed by staff according to the Commission's standard tariff review process and brought back before the Commission for approval.

ISSUE 18: Should the LECs be granted additional pricing flexibility? If so, what should it be?

RECOMMENDATION: Yes. Zone density pricing flexibility for the local transport elements of switched access should be approved on a conceptual basis for the LECs. This is consistent with Phase I of this docket and with the FCC. The FCC's zone density pricing flexibility concept, which allows for the establishment of three density pricing zones and requires that rates be averaged within each zone but allowing that rates may differ between pricing zones, should be used as a guide. No later than 90 days following the issuance of the final order in this phase of the proceedings, the LECs should be required to file their zone density pricing tariffs, including supporting incremental cost data. In addition, to the extent possible the LEC should identify the amount of any costs that, while not directly attributable to one of these elements, is associated with this service (i.e., group-specific costs). As with the special access tariffs, if a LEC desires to deviate from the FCC parameters, it should identify the variation and provide justification for the change. However, neither Contract Service Arrangements nor Switched Access Discount Pricing should be allowed at this time. [MARSH]

POSITION OF PARTIES

INTERMEDIA: No. Please see position on Issue 15.

As addressed in Issue 15, regarding special access and private line, the LECs should be offered flexibility only to the extent that their tariffs track the FCC's zone density pricing approach and are cost-based. Further, if such flexibility is granted, ICBs and CSAs should be eliminated.

ALLTEL: No position.

ATT-C: ATT-C does not oppose approval of "zone pricing" plans consistent with plans approved by the FCC, provided that the LECs meet all of the other requirements for expanded interconnection and collocation as prescribed by the FCC.

FCTA: No. The incumbent LECs should be granted no more pricing flexibility for intrastate services than was allowed for interstate services. Pricing flexibility should be allowed only after the implementation of expanded interconnection.

GTEFL: Yes. Flexible pricing is imperative for LECs to respond effectively to increased competition from their unregulated or lightly regulated competitors. The Commission should approve GTEFL's proposed zone density pricing plan, its Switched Access Discount Plan, and contract serving arrangements for switched access services.

IAC: There is insufficient competition today for the provision of switched access transport service to justify granting LEC pricing flexibility for switched access services. The Commission should separately consider, however, whether zone pricing based on identifiable cost differences is a reasonable pricing strategy.

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

SPRINT: Yes. LECs should be granted additional pricing flexibility through zone density pricing.

TELEPORT: The LECs should be granted additional pricing flexibility only to the extent that pricing flexibility mirrors FCC pricing flexibility for switched access expanded interconnection.

TIME WARNER: No. The incumbent LECs should be granted no more pricing flexibility for intrastate services than was allowed for interstate services. Pricing flexibility should be allowed only after the implementation of expanded interconnection.

UNITED/CENTEL: Yes. The Companies believe that expanded interconnection will accelerate competition in the local exchange market and thereby create pressure for significant changes in regulatory policy relative to local exchange pricing. The Companies must be given the same opportunities to compete on the basis of price, quality and technology, and they must be granted zone density pricing flexibility.

OPC: The LECs should be given some flexibility to reduce rates in the more competitive wire centers. Rate increases in rural areas should not be pre-approved by the Commission.

STAFF ANALYSIS: A major point of contention in this docket was whether pricing flexibility is needed for LEC switched local transport services, and if so, what type.

The LECs argue that pricing flexibility is needed so that they can compete with the AAVs. Without it, they claim there will be major revenue impacts, as discussed in issue 4. GTEFL's witness Lee stated, "By delaying implementation of flexible pricing options, erosion of LEC revenues will continue and LECs will not be able to recoup these losses once they occur. This, in turn, will place upward pressure on the rates of other services, including local rates, to make up the difference." (TR 905)

Centel/United witness Poag argues that if the LECs are not allowed to have pricing flexibility to respond to the competition, the benefits of competition will not flow through to the customers. (TR 805) Competitors will take customers away from the LECs, not necessarily because they are more efficient, but because there is "an artificial barrier that keeps the LEC from competing with the competition." (Poag TR 805-806)

However, as discussed in issue 4, there may be little short run impact on LEC revenues as a result of expanded switched interconnection. To reiterate briefly the discussion of revenue impact, there is evidence that only a small part of the intrastate switched access market may be opened to competition as a result of an order in this docket. (Andreassi TR 710-711, 732) This is due to the belief that AAVs cannot provide switched transport under the current Florida Statutes. (Andreassi TR 759; Beauvais TR 285) Several witnesses testified that in order for true competition to develop, the statute would need to be changed. (Beauvais TR 285)

Intermedia witness Metcalf argues that since no revenue shortfall is imminent, the present pricing scheme best serves the public interest. (TR 63) He concludes that allowing additional pricing flexibility now will "have the long-term result of keeping or knocking competing AAVs out of the arena." (TR 63)

On the other hand, IAC witness Gillan argues that the relevant question is not so much whether pricing flexibility should be allowed, as what form it should take. (TR 963) He offers that "[t]he key objective should be pricing flexibility which allows the LEC to move its access rates closer to cost in a non-discriminatory manner for all access customers. Both elements must be met." (TR 964) This means that the Commission

should allow the LECs "to have zone pricing where they can reduce their prices in areas and regions to get them closer to cost, so long as they cannot discriminate between interexchange carriers within those zones."(Gillan TR 975)

Staff believes that while negative revenue impacts may be limited, nevertheless, we must strike a balance which is workable for all the parties, including the LECs, their competitors, and the customers. The FCC seemed to sum up the situation best, when it stated:

...excessive constraints on LEC pricing and rate structure flexibility during a time of increasing competition will deprive customers of the benefits of competition and give the new entrants false economic signals. At the same time, we recognize that inadequate restrictions on LEC pricing and rate structure could permit competitive abuses that would stifle economic competitive entry and place excessive cost burdens on customers of less competitive services. (para 146, p. 273253) Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, FCC 94-190

Types of Pricing Flexibility

The LECs have proposed three types of pricing flexibility: 1) zone density pricing, 2) Contract Service Arrangements (CSAs), and 3) the Switched Access Discount Plan (SADP). Briefly, the three plans are as follows.

Zone density pricing allows the LECs to charge switched access rates which differ based on the density of DSIs in a given central office. However, all interconnectors in a given office would pay the same rates.

CSAs allow contracts between the LECs and end users to be negotiated on an individual case basis, which may result in different users paying different rates for the same services.

Under the proposed SADP, discounts may be applied on switched access usage rates, based on term or growth commitments. Thus, the rates would vary based upon the length of the contract, or upon the amount of increase in usage that the user is willing to guarantee. It is up to the user to select the option most suited to his needs. Users selecting identical options would receive the same discount. (Lee TR 321)

The FCC permitted LECs with operational switched transport interconnection arrangements in a study area to implement zone density pricing for switched transport in that study area. It also allowed LECs to offer volume and term discounts on switched transport services after interconnectors have subscribed to a certain number of switched expanded interconnection cross-connects. (Para 138, p. 473250) Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, FCC 94-190

Each of these pricing flexibility options is discussed at length.

Zone Density Pricing

Zone density pricing allows the LECs to base their switched access rates on the density of DS1s in a given central office. Thus, rates would vary from central office to central office. However, all interconnectors in a given office would pay the same rates.

The density pricing zones were determined by converting existing special access facilities and switched traffic within an exchange to DS1 equivalents. The DS1 equivalents were then totalled by central office or exchange and placed in descending order based on the number of equivalent circuits, with break points to group offices into one of three zones. (Lee TR 340)

According to SBT witness Hendrix, there will be different rates in each of the zones which will be based on market pressures. (Hendrix TR 510) In the zone density pricing plan SBT filed at the federal level, there are three zones which are based on DS1s. Zone 1 is the most dense, with 500 DS1s or greater. Zone 2 would include offices with 100 to 500 DS1s. Zone 3 is comprised of offices with fewer than 100 DS1s. (Hendrix TR 534-535) In Florida, SBT has 17 offices that would fall in Zone 1, 60 offices in Zone 2, and 136 in Zone 3. (Hendrix TR 535) The illustrative tariff filed with the FPSC was the same plan and structure that was filed at the federal level, and was intended to introduce the plan and the structure. (Hendrix TR 510, 536)

GTEFL's density breakpoints differed slightly from SBT's but were similar. GTEFL witness Lee stated that Zone 1 would be the most competitive market; Zone 3 would be the least competitive. (TR 340-341) The switched access zone density tariff filed by GTEFL is also an illustrative tariff, to define the structure of the tariff and demonstrate the terms and conditions. Pricing was

not included. (Lee TR 341) Witness Lee anticipates that there will be higher prices for Zone 2 and Zone 3 than for Zone 1 because Zone 1 is the most competitive market. (TR 342) If this Commission approves in concept the Company's zone pricing tariffs, GTEFL would be prepared to file, within a short period of time, some actual prices. (Lee TR 343)

Neither SBT nor GTEFL were able to say whether the filings would be revenue neutral. (Lee TR 343; Hendrix TR 536, 538) GTEFL witness Lee conceded that ultimately rates for Zone 2 and Zone 3 would be higher than for Zone 1. (TR 342) He agreed that a rate decrease for Zone 1 with zone 2 and 3 remaining revenue neutral was one option. (TR 344) He stated that rate shock for Zone 3, which includes smaller exchanges and rural areas, would be a concern in making any pricing decision. (TR 344) OPC takes the position that no price increases should be pre-approved in rural areas as a result of this docket. However, as with the special access tariffs for Phase I of this docket, staff believes that these concerns should be addressed on a LEC-specific basis at the time the LECs file their intrastate zone density pricing plans and tariffs.

SBT advocates approval of the same rates for both inter- and intrastate because it helps customers in trying to reconcile their bills. (Hendrix TR 428) Additionally, it could eliminate a problem that the companies have in the reporting of the percent interstate usage (PIU). (Hendrix TR 429) Most important is that it will promote efficient use of the services that SBT provides to its customers. (Hendrix TR 429)

IAC witness Gillan recommends that a single form of pricing flexibility, zone pricing, be granted for the local telephone companies to respond to competition--subject to a requirement that price reductions apply on a non-discriminatory basis to all transport customers within a zone. (TR 962, 966) He argues that zone pricing recognizes that in a particular region costs might be lower than in some less dense region. (TR 622) By allowing different prices in these regions, the LEC is able to meet competition and reflect its underlying costs in a non-discriminatory manner. (Gillan TR 622-623)

Teleport recommends that the Commission grant the LECs pricing flexibility only to the extent granted by the FCC for interstate switched access services. (Andreassi TR 732) Teleport witness Andreassi argues that the pricing flexibility granted by the FCC is adequate. (TR 723) This would include both zone density pricing and volume and term discounts. (Teleport BR 22)

ATT-C would not oppose approval of "zone pricing" plans consistent with plans approved by the FCC, provided that the LECs meet all of the other requirements for expanded interconnection and collocation as prescribed by the FCC. (Guedel TR i10)

The FCC permitted LECs to implement density zone pricing of interstate switched transport in a study area after at least one interconnector has taken a switched cross-connect element. (para 149, p. 473254) Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, FCC 94-190 Staff notes that in Phase I of this docket (for special access and private line) no requirement that the LECs subscribe a certain number of cross connects was required. (Order No. PSC-94-0285-FOF-TP, issued March 10, 1994)

Zone density pricing appears to be the proposal most accepted by the parties. Its implementation would be consistent with the initial Phase I order in this docket, and with the plans approved by the FCC. Additionally, it allows pricing flexibility that is based on density of DSIs in a particular central office, not on individual customer characteristics. Thus, staff believes this plan has less potential to be discriminatory than CSAs and the SADP. As previously discussed, this Commission did not require a certain number of cross connects before zone density pricing could be implemented for special access services. Staff believes that on this point, the tariffs for switched access services should be consistent with the Phase I order, rather than with the FCC filings.

Contract Service Arrangements

CSAs allow contracts between the LECs and end users to be negotiated on an individual case basis in situations where "there is reasonable potential for economic bypass" of a company's service. (Lee TR 318) Additionally, a customer must have a pending competitive offer before the LEC can respond with a CSA. (Poag TR 798) Staff observes that, since the contracts are negotiated, the use of CSAs may result in different users paying different rates for the same services.

In support of CSAs, GTEFL witness Lee argues that the CSA allows LECs to use off-tariff pricing when there is a reasonable potential for uneconomic bypass of the Company's services. He states that "[w]hile CSAs are not the perfect antidote to non-LECs' greater pricing and tariffing flexibility, they are helpful in this regard." CSAs already apply for private line and special access services; he contends there is no reason to deny this tool

to the LECs for switched access services, which will become even more competitive with the advent of expanded interconnection. (Lee TR 318-19) Witness Lee suggests that, since CSAs were approved for special access in the Phase I order of this docket, they should be approved for switched access in Phase II to be consistent. (Lee TR 308-309; 912) However, this does not take into consideration the fact that the LECs already had CSAs for private line and special access services, while that is not the case for switched access.

Centel/United witness Poag argued that CSAs "are clearly not the most effective alternative to meet the competitive challenges posed by the AAVs." (TR 797) He believes that zone density pricing is more effective, because it recognizes cost and market differences. (TR 797) He did state that the CSA process could be improved by eliminating the current requirement that the customer have a pending competitive offer before the LEC can respond with a CSA. (TR 797-798)

Some of the witnesses argue that CSA authority should not be extended for LEC switched access service. The pricing flexibility afforded the LECs at the interstate level is more than adequate. (Andreassi TR 723) Granting CSA authority on top of zone density pricing will afford too much pricing flexibility at the intrastate level given the overwhelming market dominance of the LECs. (Andreassi TR 723) Long term, too much pricing flexibility could thwart the development of competition which could result in fewer choices for end users. Further, no pricing flexibility should be permitted until after the successful negotiation and implementation of expanded interconnection arrangements. (Metcalf TR 63)

The strongest arguments against allowing CSAs for switched access services come from IAC witness Gillan. Witness Gillan argues that the contract service arrangement is a type of pricing flexibility that is inappropriate to this marketplace. Because access service really does not have unique characteristics, the CSA process is not well suited to it. (TR 975-976)

"Clearly, the present form of pricing flexibility--the contract service arrangement ("CSA")--is an anathema to interexchange competition because it presupposes discrimination on a customer-by-customer basis. This form of flexibility is completely unacceptable for a service that is intended to be a wholesale input to the long distance industry." (Gillan TR 964)

Witness Gillan argues:

The principal LEC argument [for CSA authority] appears to be that geographic conditions affect their costs and that charging an averaged rate prevents the LECs from effectively competing. The answer is to allow zone pricing. With zone pricing the LECs are able to reduce prices closer to costs while maintaining appropriate relationships among transport options and customers. In this way--and only in this way--the LEC can be permitted to respond to competition while customers are protected from discrimination. In this regard I agree with United Witness Poag, the inherently discriminatory CSA approach should be replaced by non-discriminatory zone prices. (Gillan TR 965)

While there is some support for CSA authority for switched access services, generally the parties prefer zone density pricing. Additionally, as noted above, while CSA authority was allowed for special access in Phase I of this docket, it is important to note that the LECs already had this authority for special access. Staff agrees with witness Gillan that CSAs are potentially more discriminatory. Additionally, the LECs' primary argument for pricing flexibility is competition. As discussed in Issue 4, competition will be limited for the foreseeable future. Staff believes that approval of additional pricing flexibility in the form of CSAs would be premature. Accordingly, CSAs for switched access services should not be approved at this time.

Switched Access Discount Plans

GTEFL filed its Switched Access Discount Plan (SADP) on May 16, 1994. (EXH 16) This is an illustrative tariff filing which details volume and term discounts for switched access. There are two types of discounts: 1) a term plan, and 2) a growth plan. The term plan would provide savings on the monthly recurring charge based on the length of term and the usage levels the customer commits to. The longer the time commitment and the higher the usage level, the greater the discount would be. The growth plan would link a customer's savings to usage growth over a one-year time period as compared to prior access usage; the greater the percentage of growth, the greater the discount to the

customer. (GTEFL Lee TR 316, 329) The percentage is tailored for the individual customer. It can be based on total state usage or on as small an area as an individual end-office. (Lee TR 330) No other LECs filed a similar plan in this docket.

Some of the parties did not favor the SADP, particularly the growth portion. The primary complaint was the concern that the pricing would not be based on costs, and thus could be discriminatory. (Gillan TR 966; Guedel TR 855) GTEFL witness Lee agreed that the proposal was not cost-based. He explains, "The [SADP] plan that we filed is illustrative in nature at this point in time. We haven't developed specific rates or prices, so it cannot possibly be based on cost at this point in time." (Lee TR 323-324) However, he did not indicate whether GTEFL would endeavor to base the rates on cost, if the SADP was approved conceptually.

ATT-C witness Guedel also expressed concern that the pricing would not be cost based. (TR 844) He gave the following example of how he believes the SADP tariff would work:

Customer A delivers 1 million minutes of use to GTE in a year, Year 1. In Year 2, customer A commits to deliver 1,050,000 minutes to GTE. That's approximately a 5% increase. Under the SADP, the switched access discount plan, this customer could qualify for a discount on the 1,050,000 minutes. (Guedel TR 844)

Let's take a look at customer B. Customer B delivers 100 million minutes of use to GTE in Year 1. In Year 2 customer B delivers 100 million minutes of use again to GTE. This customer, however, does not receive a discount and does not qualify for a discount under the GTE plan. Now, I think you can make an argument that volume, in an economy of scale world, can result in lower per unit costs. But I don't see how you can make an argument that the company who provides 1 million minutes can anyway have less cost to provide that 1 million minutes than to serve the customer who delivers 100 million minutes, again on a per minute of use basis. So for these reasons I think the plan is flawed and I think it should be rejected. (Guedel TR 844-845)

Staff would note that what witness Guedel is describing is the growth portion of the plan. As discussed above, under the term portion, if the customer committed to a particular term and usage, a discount would be received. As pointed out by witness

Lee, the usage could be tailored to the individual needs of the user. (TR 841) Thus, customer B in witness Guedel's example would have the option of a term discount under GTEFL's proposal.

IAC is also opposed to the SADP proposal. IAC witness Gillan argues that "in the name of responding to the market, GTE has proposed a plan where every single one of their customers in this hearing has asked you to deny it." (Gillan TR 976) He expounds that the plan "would allow for GTE to selectively price virtually every combination of term and volume commitment without cost justification. The threshold criteria for access pricing--non-discrimination--cannot be maintained under this structure." (Gillan TR 966)

Sprint witness Rock agreed with IAC and ATT-C that pricing should be cost-based. (TR 1005) He states that he generally cannot support the SADP since it is not supported by cost data. (TR 1005) He cautions that any proposals for LEC pricing flexibility must be based only on underlying cost differentials. (TR 662) He argues that "the result of SADP and CSAs would be that some IXCs would contribute more to the recovery of the LEC common costs than other IXCs." (TR 662-663)

Teleport was not opposed to the SADP, and recommended that the Commission grant the LECs pricing flexibility only to the extent granted by the FCC for interstate switched access services. (Andreassi TR 732) Teleport witness Andreassi argues that the pricing flexibility granted by the FCC is adequate. (TR 723) This would include both zone density pricing and volume and term discounts. (Teleport BR 22)

As for the LECs, as previously noted, none filed plans similar to GTEFL's SADP proposal. Moreover, other than GTEFL, the LECs seemed to show no predilection for the SADP. SBT extensively briefed the need for pricing flexibility in general, but did not address the SADP. (SBT BR 48-52) Centel/United argued in favor of pricing flexibility in the form of zone density pricing and CSAs, but like SBT, did not address the SADP. (Centel/United BR 13-15)

Staff notes that the FCC has approved the concept of term and discount pricing for switched access transport, but only with considerable restrictions. In the Switched Transport Expanded Interconnection Order, the FCC

permitted the LECs to begin offering switched transport with volume and term discounts in any particular study

area only after one of the following conditions is met: (1) 100 DS1-equivalent switched cross-connects are operational in the Zone 1 offices in the study area; or, (2) an average of 25 DS1-equivalent switched cross-connects per Zone 1 office are operational. (Zone 1 refers to the LEC's density pricing zone with the greatest traffic density.) In study areas with no Zone 1 offices, the LECs may implement volume and term discounts once five DS1-equivalent switched cross-connects have been taken in the study area. LECs that have not implemented density zone pricing may implement volume and term discounts in a study area after customers have subscribed to 100 DS1-equivalent switched cross-connects in the study area. (para 177, p. 473266, see Switched trans order para 118 and nn. 263-265) Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, FCC 94-190 Satisfaction of either of these conditions will provide marketplace evidence that the LECs' expanded interconnection tariffs provide a viable competitive opportunity. (Order 93-379, para 118) Expanded Interconnection with Local Telephone Company Facilities, etc. CC Docket No. 191-141, CC Docket No. 80-286, FCC 93-379

In fact, GTEFL witness Lee argued that the switched access pricing flexibility granted by the FCC for volume/term discounts "puts significant restrictions and a burden of proof on the LECs which rendered this type of pricing flexibility unworkable for the most part." (TR 903)

The FCC clearly had some concerns to impose restrictions which have been characterized as "unworkable." Additionally, as discussed in issue 4, the parties generally agree that, at least in the short run, competition will be limited in switched access collocation on the intrastate level. Thus, it appears that competition in this state initially will be more limited than that which may occur in the interstate jurisdiction. In staff's view, that would render the need for intrastate pricing flexibility less pressing than that found by the FCC.

Like many of the parties, staff has concerns about the SADP. The growth portion of the plan was not well received, as discussed above. Staff would agree with the parties that there appears to be no cost basis for this portion of the SADP. Nor can staff discern exactly what the point of it is. Term discounts, on the other hand, are more practicable. As pointed

out by GTEFL in its brief, the term discount portion of the plan may have more support. (BR 31)

However, staff's primary concerns are not so much with the details of the plan as with the question of whether it is too much, too soon. While the LECs argue eloquently that pricing flexibility is needed to protect them from competition, there has been an insufficient in the record that there will be dire effects from the implementation of expanded interconnection for switched access. As discussed in Issue 4, any impact on LEC revenues will be minimal. Approval of expanded interconnection for switched access will not bring sweeping changes to the market. Until the possibility for full competition is brought about by legislative change, staff does not believe there will be a need for more pricing flexibility than that afforded by zone density pricing. Accordingly, staff does not believe there is a need for the SADP to be approved in this proceeding.

Conclusion

Zone density pricing flexibility for the local transport elements of switched access should be approved on a conceptual basis for the LECs. This is consistent with Phase I of this docket and with the FCC. The FCC's zone density pricing flexibility concept, which allows for the establishment of three density pricing zones and requires that rates be averaged within each zone but allowing that rates may differ between pricing zones, should be used as a guide. No later than 90 days following the issuance of the final order in this phase of the proceedings, the LECs should be required to file their zone density pricing tariffs, including supporting incremental cost data. In addition, to the extent possible the LEC should identify the amount of any costs that, while not directly attributable to one of these elements, is associated with this service (i.e., group-specific costs). As with the special access tariffs, if a LEC desires to deviate from the FCC parameters, it should identify the variation and provide justification for the change. However, neither Contract Service Arrangements nor Switched Access Discount Pricing should be allowed at this time.

ISSUE 15: Should the proposed LEC flexible pricing plans for private line and special access services (Phase I) be approved?

RECOMMENDATION: Not at this time. Staff recommends that the decision regarding the LEC proposed intrastate flexible pricing plans for private line and special access services should be deferred until the Phase I Order on Expanded Interconnection for Special Access and Private Line Services becomes final. After the Phase I Order becomes final, staff will bring a recommendation before the Commission addressing each of the LECs' proposed tariffs for intrastate private line and special access flexible pricing. This recommendation will be based on the Phase I Order and the Phase II record for this issue. [CHASE]

POSITION OF PARTIES

INTERMEDIA: No. Introduction of these flexible intrastate pricing plans is premature and anticompetitive. Given the substantial pricing flexibility presently afforded to the LECs in the form of contract serving arrangements and individual case basis pricing, additional flexibility is unnecessary. However, if an alternative pricing plan is to be approved, it should mirror the "zone density" approach already approved by the FCC, and should be contingent upon the elimination of CSAs and ICBs.

ALLTEL: No position.

ATT-C: AT&T does not oppose the approval of "zone pricing" plans consistent with plans approved by the FCC, provided that the LECs meet all of the other requirements for expanded interconnection and collocation as prescribed by the FCC.

ECTA: No. The Commission should approve no pricing flexibility for intrastate private line and special access services beyond that allowed by the FCC for interstate services. Moreover, pricing flexibility should be allowed only after implementation of expanded interconnection.

GTEFL: Yes. The Commission in Phase I granted LECs zone pricing ability and asked them to submit specific plans. GTEFL has complied with the Commission's Order and its zone density pricing plan should be approved.

IAC: No position.

SOUTHERN BELL: Yes. Southern Bell has submitted a special access tariff that would implement a zone pricing structure

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

(without initially changing rates) on the basis of wire center groupings rather than at averaged statewide rates. Having the structure in place will allow Southern Bell to respond quickly to competition as it develops. At the same time, no party has raised any legitimate basis to protest this tariff.

SPRINT: No position.

TELEPORT: No. LECs should not be permitted additional pricing flexibility because the impact of intrastate Local Transport Restructuring will be minimal, affecting only the local transport portion of the switched access market which encompasses approximately 2.0% of the switched access revenues.

TIME WARNER: No. The Commission should approve no pricing flexibility for intrastate private line and special access services beyond that allowed by the FCC for interstate services. Moreover, pricing flexibility should be allowed only after implementation of expanded interconnection.

UNITED/CENTEL: Yes. Flexible pricing plans are essential if the Companies are to be able to compete with entities benefiting from expanded interconnection opportunities. Approval of United's and Centel's zone density pricing plan in Florida will begin the necessary transition toward market-based prices for the Companies' private line and dedicated access services.

OPC: The Commission should not allow the companies flexibility to increase any rates over those that exist today. Otherwise, the LEC's may disadvantage users located in rural areas. Some downward pricing flexibility should be allowed in the more competitive wire centers.

STAFF ANALYSIS: In Phase I of this docket the Commission approved, in concept, zone density pricing flexibility for the LECs. LEC-specific approval was held in abeyance until review of each LEC's zone density pricing flexibility plan and associated tariff. (Phase I Order, 23) This issue was established in Phase II to evaluate the LEC-specific proposed flexible pricing plans for private line and special access services. GTEFL, United/Centel, and Southern Bell filed proposed zone density pricing tariffs. (Beauvais EXH 15; Denton EXH 25; Poag EXH 51 & 52)

ATT-C, GTEFL, Southern Bell, United/Centel argue that the LECs' proposed flexible pricing plans for private line and special access services should be approved, while Intermedia,

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

FCTA, Teleport, Time Warner, and OPC assert that these proposed flexible pricing plans for private line and special access services should not be approved. ALLTEL, IAC, and Sprint take no position on this issue.

Although the conceptual decision as to whether the LECs should be granted pricing flexibility for private line and special access was determined in Phase I, most parties attempt to reargue the issue here in Phase II.

Intermedia states that the introduction of these flexible pricing plans is premature and anticompetitive. Intermedia agrees with witness Andreassi of Teleport who argues that since an order approving switched access interconnection will open only a fraction of the intrastate switched access market to competition, no significant loss of revenues to the LECs should be expected. (TR 710) Intermedia does acknowledge that in Phase I the Commission approved conceptually a zone-density pricing approach, and asserts that if the Commission chooses to allow it in Phase II it should mirror the FCC's zone density scheme for interstate special access and private line services. However, Intermedia argues that such flexibility will have the long-term results of keeping or knocking competing AAVs out of the arena. (TR 63)

Teleport asserts that the zone pricing flexibility granted to the LECs by the FCC for interstate service and approved in concept by the Commission in Phase I of this proceeding is adequate but no additional pricing flexibility is necessary. (Andreassi TR 723) FCTA asserts that flexibility beyond that allowed by the FCC for interstate services should not be allowed. (Smith TR 573)

GTEFL asserts that its proposed flexible pricing plans for private line and special access should be approved because they comply with the Florida Commission's Order in Phase I. GTEFL also urges the Commission to reject the arguments by Teleport that physical collocation or virtual collocation equivalent to physical is a prerequisite to additional pricing flexibility for the LECs. (Andreassi TR 720-721) GTEFL points out that this argument was rejected by the FCC because it ruled that LEC pricing flexibility should not depend on the form of collocation. (FCC Report & Order, Released 7/25/94, 145)

Southern Bell asserts that its proposed flexible pricing plans for private line and special access should be approved. Southern Bell filed special access tariffs that would implement a

zone pricing structure on the basis of wire center grouping rather than at averaged statewide rates. This tariff introduces the zone density pricing structure, but not the rates. The rates will initially be the same in each zone. Southern Bell asserts that having the structure in place is important so that it may respond quickly to competition by filing for changes in the rates. (Denton TR 370) In addition, Southern Bell argues in its post hearing brief that its zone pricing tariff should be approved because no party has claimed that is not consistent with the Phase I Order, or otherwise raised a legitimate basis for a protest of the tariff; however, Southern Bell does not state this in the record.

United/Centel asserts that its proposed flexible pricing plans for private line and special access should be approved because such plans are essential so that LECs are able to compete with entities benefiting from expanded interconnection. Its pricing plan essentially mirrors the zone density pricing plan filed with the FCC. United/Centel urges the Commission to allow the implementation of this plan upon implementation of expanded interconnection. (Poag TR 797)

In Phase I of this docket the Commission approved, in concept, zone pricing flexibility for the LECs and ordered Tier 1 LECs to file proposed zone density pricing tariffs. LEC-specific approval was held in abeyance until review of each LEC's zone density pricing flexibility plan and associated tariff. These plans and tariffs were to be reviewed in this Phase II issue. No party has filed testimony to challenge the specific plans or tariffs. The parties are still arguing whether or not the LECs should be granted a form of pricing flexibility for private line and special access in the first place.

Although the Phase I Order approved, in concept, zone pricing flexibility, staff believes that this decision has essentially not been finalized at this time because the pricing flexibility issue in Phase I is under reconsideration and the Phase I Order has been stayed. Therefore, staff recommends that the decision regarding the LEC proposed intrastate flexible pricing plans for private line and special access services should be deferred until the Phase I Order on Expanded Interconnection for Special Access and Private Line Services becomes final. After the Phase I Order becomes final, staff will bring a recommendation before the Commission addressing each of the LECs' proposed tariffs for intrastate private line and special access flexible pricing. This recommendation will be based on the Phase I Order and the Phase II record for this issue.

ISSUE 16: Should the LECs' proposed intrastate private line and special access expanded interconnection tariffs be approved?

RECOMMENDATION: Not at this time. Staff recommends that the decision regarding the LEC proposed intrastate private line and special access expanded interconnection tariffs should be deferred until the Phase I Order on Expanded Interconnection for Special Access and Private Line Services becomes final. After the Phase I Order becomes final, staff will bring a recommendation before the Commission addressing each of the LECs' proposed intrastate private line and special access expanded interconnection tariffs. This recommendation will be based on the Phase I Order and the Phase II record for this issue. [CHASE]

POSITION OF PARTIES

INTERMEDIA: No position at this time, pending clarification of the status of the proposed intrastate private line and special access expanded interconnection tariffs in light of the prospective refiling of the corresponding interstate tariffs.

ALLTELE: No position.

ATT-C: ATT-C does not oppose approval of LEC tariffs filed to meet the requirements of this Commission's order in Phase I of this docket (Order PSC-94-0285-FOF-TP), or a modification of the Phase I order consistent with the FCC actions of July 14, 1994, regarding expanded interconnection.

FCTA: Tariffs should only be approved to the extent that they mirror the LECs' interstate tariffs and comply with the requirements of Phase I of this proceeding.

GTEFL: Not as currently filed. The private line and special access expanded interconnection tariffs should be approved only after they are revised to exclude mandatory physical collocation and associated terms.

IAC: No position.

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

DOCKET NO. 921074-TF
NOVEMBER 18, 1994

SPRINT: No position.

TELEPORT: To the extent that these tariffs mirror the LECs' interstate tariffs, they should be approved. The Commission must also ensure that the LECs' tariffs do not contain unreasonable warehousing provisions and comply with the Phase I Final Order.

TIME WARNER: Tariffs should only be approved to the extent that they mirror the LECs' interstate tariffs and comply with the requirements of Phase I of this proceeding.

UNITED/CENTEL: No. United's and Centel's private line and special access expanded interconnection tariffs need to be revised to remove the physical collocation requirement.

OPC: No position.

STAFF ANALYSIS: In Phase I of this docket, the Commission ordered all Tier 1 LECs to file expanded interconnection tariffs which, at a minimum, mirrored the interstate tariffs with the exception of those standards, terms and conditions adopted in the Phase I Order that are different from those adopted by the FCC. GTEFL, Southern Bell, and United/Centel filed proposed intrastate expanded interconnection tariffs for private line and special access based on a physical collocation mandate. (Beauvais EXH 15; Denton EXH 25; Poag EXH 51 & 52) This issue addresses the LECs' proposed special access and private line expanded interconnection tariffs.

Because of the decision by the United States Court of Appeals for the District of Columbia and because of the Phase I issues that are under reconsideration, the FPSC's Phase I Order on Expanded Interconnection for Special Access and Private Line Services is currently stayed. On remand, the FCC mandated that all Tier 1 LECs make virtual collocation available, under tariff, to all interconnectors that request it. Concerning physical collocation, the FCC stated that LECs will be exempted from a mandatory virtual collocation requirement "at any central office or offices for which the LEC opts to offer under tariff expanded interconnection through physical collocation." (FCC Report & Order, Released 7/25/94, para 31)

In Issue 8 of Phase II (switched access), staff is recommending a mandatory virtual collocation policy. This policy would be consistent with the FCC decision, and staff believes it makes sense because both interstate and intrastate traffic will be carried over the same facilities. Staff believes that this

rationale should also be used to make sure the private line and special access expanded interconnection and the switched access expanded interconnection tariffs consistent (mandatory virtual). Since the tariffs filed for private line and special access contain terms and conditions for mandatory physical collocation, they will most likely need to be revised to remove the mandatory physical collocation requirements.

ATT-C, Southern Bell, Teleport, and GTEFL assert that the LECs' proposed intrastate private line and special access expanded interconnection tariffs should be approved, while FCTA and Time Warner argue that these tariffs should not be approved until the decisions on the other issues in this docket are made. United/Centel state that the tariff should be revised to remove the physical collocation requirement. ALLTEL, IAC, OPC, and Sprint take no position on this issue. Intermedia takes no position at this time, pending clarification of the status of the proposed tariffs in light of the prospective refiling of the corresponding interstate tariffs.

Southern Bell, Teleport, United/Centel, and GTEFL essentially state that the tariffs should mirror the revised interstate special access and private line expanded interconnection tariffs. (Denton TR 375; Andreassi TR 722; Poag TR 799-804)

Southern Bell asserts that this issue was included in this phase of the docket to allow parties the ability to protest the tariffs if they chose to do so. (Prehearing Order No. PSC-94-0277-PCO-TL, 2) The only party which has raised an issue to the tariffs is Teleport. Teleport points out that Southern Bell's tariff does not comply with the Phase I Order because it does not contain interconnection at the DSO level, and it contains unreasonable warehousing provisions. (Andreassi TR 721-722) Southern Bell asserts that it did not include interconnection at the DSO level because this aspect of the Phase I Order is under reconsideration. (Denton TR 371)

Teleport asserts that to the extent these tariffs mirror the LECs' interstate tariffs, comply with the Phase I Order and do not contain unreasonable warehousing provisions, they should be approved. Teleport argues that a 60 day ordering "provision (is) unreasonable and believes it will permit the LECs to force collocators to order connections, thus triggering pricing flexibility." (Andreassi TR 722) Teleport has asked for reconsideration of this warehousing provision.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

Southern Bell argues that Teleport appears to have misunderstood the provisions of the Phase I Order in regard to the warehousing of space. Warehousing is when AAVs, in order to keep competitors out of a certain central office, order collocation space but do not use it. Witness Denton stated the following in his rebuttal testimony:

Mr. Andreassi has confused the FCC's order concerning how pricing flexibility is 'triggered' for interstate special access services with what was ordered by this Commission. In the Order issued March 10, 1994, this Commission granted the LECs pricing flexibility and ordered the LECs to file plans and accompanying tariff proposals. Thus, pending Commission approval of their tariff proposals, the LECs already have pricing flexibility. There is no reason for the LEC to force an interconnector to order collocation prematurely in order to gain pricing flexibility. (TR 932-33)

Southern Bell argues that its intrastate tariffs may need to be modified to mirror the modified interstate tariffs ordered by the FCC. Specifically, the FCC required the parties to file modified tariffs that are consistent with the terms of its order on remand that was entered on July 14, 1994. (Denton TR 376)

FCTA agrees with Teleport and Southern Bell who assert that the tariffs should only be approved to the extent they mirror the LECs' interstate tariffs and comply with the requirements of Phase I of this proceeding, and such approval should be subject to any changes made by the FCC and decisions made on reconsideration of Phase I. (Andreassi TR 721; Denton TR 371)

United/Centel and GTEFL both assert that the private line and special access interconnection tariffs need to be revised to remove the physical collocation requirement. (Poag EXH 44, 22; Beauvais TR 243)

Although the policy decisions for special access and private line expanded interconnection were for the most part decided in Phase I of this docket, the actual expanded interconnection tariffs were not at issue. This issue in Phase II of this docket addresses the LEC-specific tariffs. For the most part, parties did not address the LEC-specific tariffs. However, Teleport does argue that Southern Bell omitted its DSO interconnection element

from its tariff. In addition, Teleport testified about its concerns over Southern Bell's warehousing provisions in the tariff. (Andreassi TR 721-22) The issues of whether LECs should be required to provide interconnection at the DSO level as well as the warehousing of space were essentially determined in Phase I of this docket. These issues raised by Teleport appear to be valid; however, the Phase I Order is stayed and under reconsideration, and aspects of the order which affect these tariffs have not yet been resolved.

Even though the LEC intrastate special access and private line expanded interconnection tariffs appear, for the most part, to be appropriate (Except Southern Bell's tariff which does not contain interconnection at the DSO level), they are based on what was initially ordered at the FCC and in Phase I of this docket. The FCC has changed its original order from mandatory physical collocation to mandatory virtual collocation. Moreover, the Phase I Order is stayed and certain issues from Phase I are under reconsideration (DSO, checkerboarding, and pricing flexibility). Consequently, the decision to approve, deny or suspend the LECs private line and special access tariffs cannot be made at this time.

Therefore, staff recommends that the decision regarding the LEC proposed intrastate private line and special access expanded interconnection tariffs should be deferred until the Phase I Order on Expanded Interconnection for Special Access and Private Line becomes final. After the Phase I Order becomes final, staff will bring a recommendation before the Commission addressing each of the LECs' proposed intrastate private line and special access expanded interconnection tariffs. This recommendation will be based on the Phase I Order and the Phase II record for this issue.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

ISSUE 23A: Should the Commission modify the Phase I Order in light of the decision by the United States Court of Appeals for the District of Columbia Circuit?

RECOMMENDATION: Yes. The Commission should modify the Phase I Order in light of the decision by the United States Court of Appeals for the District of Columbia. Staff recommends that, generally, the Phase I Order should mirror the decisions made in Phase II, but specifically these Phase I decisions should not be dealt with until after the reconsideration of the Phase I Order.
[CHASE]

POSITION OF PARTIES

INTERMEDIA: Yes.

ALLTEL: Yes. The Commission should modify its Phase I Order to make it clear that the FPSC cannot and will not resolve unsuccessful negotiations between non-Tier 1 LECs and a bona fide request in any manner that conflicts with the Court of Appeals decision.

ATT-C: No position.

FCTA: No. The Order should only be modified if the Commission finds that it lacks statutory authority to mandate physical collocation or that an intrastate policy differing from the FCC approach would be unduly burdensome.

GTEFL: Yes. The Commission must eliminate the physical collocation mandate and associated requirements to avoid constitutional violations.

IAC: No position.

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

SPRINT: Yes. The Commission's Order in Phase I should be modified to reflect the change in FCC requirements with regard to mandatory virtual collocation.

TELEPORT: The Commission should modify the Phase I Final Order by eliminating the physical collocation mandate and requiring virtual collocation that is technically, operationally and economically equivalent to physical collocation.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

TIME WARNER: Yes. The Court of Appeals remand and subsequent FCC vote impact both the Phase I Order and the tariffs filed in Phase II of this proceeding.

UNITED/CENDEL: Yes. This Commission must modify its Phase I Order in order both to comply with the U.S. Court of Appeals' decision that mandatory physical collocation is an unlawful taking and to avoid inconsistent jurisdictional treatment resulting from the FCC's Order in Docket CC91-141, released July 25, 1994, ordering virtual collocation expanded interconnection.

OPC: No position.

STAFF ANALYSIS: Intermedia, ALLTEL, ATT-C, GTEFL, Southern Bell, Sprint, Teleport, Time Warner, and United/Centel assert that the Phase I Order should be modified in light the decision by the United States Court of Appeals for the District of Columbia Circuit. PCTA argues that the Phase I Order should not be modified. IAC and OPC take no position on this issue.

ATT-C asserts that the Phase I order should be modified in light of the decision of the U.S. Court of Appeals for the D.C. Circuit. Witness Guedel states:

In Phase I of this docket, the...Commission adopted a mandatory physical collocation standard consistent with that of the FCC. The decision of the court renders the Phase I ruling inconsistent with whatever the interstate policy becomes and sets it up for possible similar legal challenges. For these reasons, the Commission needs to reconsider its order in Phase I.
(TR 133-34)

However, ATT-C asserts that the Commission should continue to encourage physical collocation because it most closely duplicates the connecting arrangements of the incumbent and it offers the most hope for the development of competition.(TR 134)

GTEFL and Southern Bell also argue that the Phase I Order should be modified. Witness Beauvais asserts that since the Court of Appeals ruled against the FCC's mandatory physical collocation and fresh look policies and Florida PSC adopted the same policies, "it seems reasonable to expect that this Commission's mandatory physical and fresh look provisions would be overturned as well."(TR 243) Southern Bell argues that the Commission should modify its order to provide for the LEC to choose the form of collocation to offer in each case.(Denton TR

375) In addition, witness Denton states that, "it is important that there be a great degree of consistency between the interstate and intrastate jurisdictions as to expanded interconnection." (TR 375-76)

Teleport asserts that the Court decision does not materially impact the Phase I policy which it determined to be in the public interest. Teleport argues that the Commission should mandate in Phase II that the LECs offer virtual collocation for special access and switched access which is "technically, economically, and operationally equivalent to physical collocation." (Andreassi TR 729) Witness Andreassi states that, "As a general matter, TCG believes that the Court decision actually simplifies this docket to the extent that appeals at the federal level are complete and final interstate tariffs for special and switched access will be in place to be used as a guide." (TR 726)

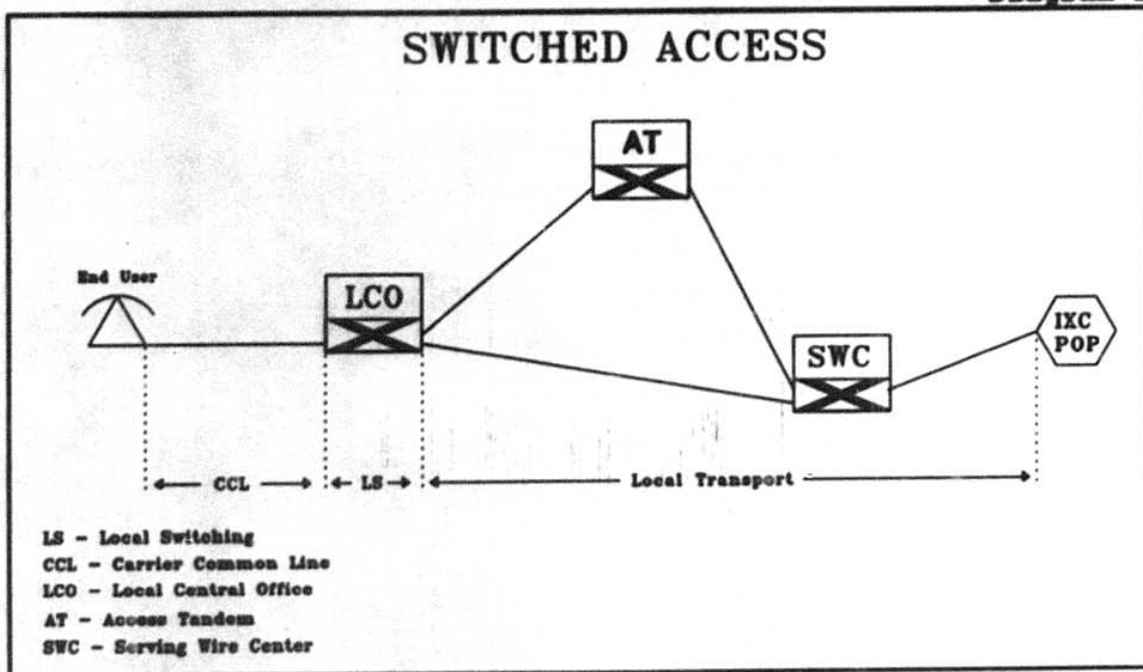
United/Centel assert that the Commission must modify its Phase I Order because the Court of Appeals decision clearly demonstrates that mandatory physical collocation constitutes a taking of LEC property. In addition, United/Centel argues that the decision creates the potential for inconsistent federal and state treatment. Witness Poag states, "(t)hat potential has been taken a step further with the FCC's order of July 14, 1994, directing the LECs to provide expanded interconnection through virtual collocation." (TR 802)

Most parties take the position that the Commission should modify its Phase I Order, and they also believe that the interstate and intrastate policies should be consistent. Because of the Courts decision and the FCC changing to a mandatory virtual collocation requirement, staff believes it is appropriate for the Commission to modify the Phase I Order. Since the same facilities will be used to carry both interstate and intrastate traffic, it is practical to mirror the FCC. Staff recommends that, generally, the Phase I Order should mirror the decisions made in Phase II, but specifically these Phase I decisions should not be dealt with until after the reconsideration of the Phase I Order.

CASE BACKGROUND - LOCAL TRANSPORT

Switched Access Service is provided by LECs to IXC's, and provides a communications path between an IXC's point of presence (POP) and an end user's premises. The following diagram shows how Switched Access is provided and the associated rate elements.

Diagram 1

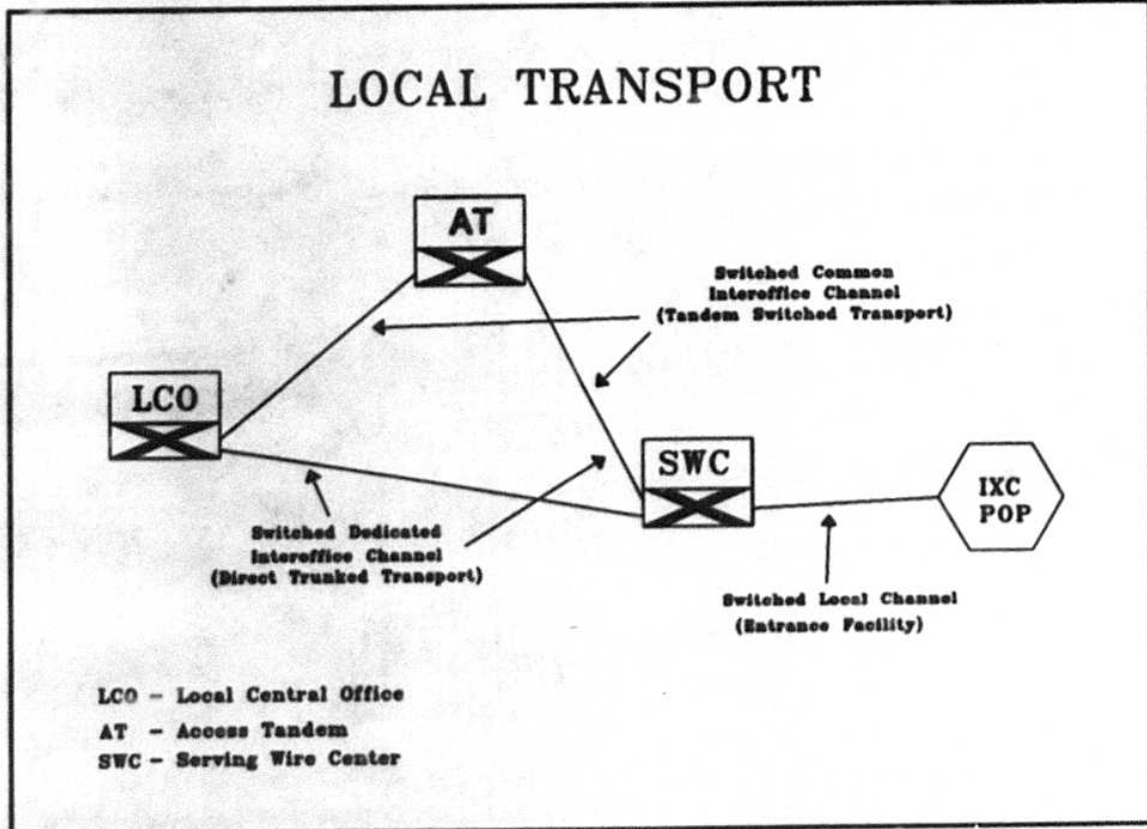


There are currently four major rate elements associated with the provision of Switched Access:

- 1) **Carrier Common Line** is the facility that connects the end user's premises to the Local Central Office serving that end user.
- 2) **Local Switching** is the rate that recovers the cost of switching traffic in the Local Central Office, going to or from the end user.
- 3) **Local Transport** is the rate that recovers the cost of transporting traffic between the Local Central Office serving the end user to the IXC's POP. This portion of the call may or may not involve the use of the Access Tandem (which serves to aggregate switched traffic within the EAEA) depending on the way the IXC's trunking arrangements are configured.
- 4) **Busy Hour Minute of Capacity (BHMOc)** is a capacity charge unique to Florida. It was originally designed to ensure revenue neutrality when access charges were first developed following divestiture. Most LECs in Florida have eliminated this rate element.

Expanded interconnection, as defined in this docket, only allows for competition among carriers to provide Local Transport. Although the potential for competition exists for all switched access rate elements (the FCC has recently authorized competition for Local Switching), the current Florida proceeding addresses only the Local Transport rate element. Below is a diagram showing the various components and possible configurations for Local Transport.

Diagram 2



The components of Local Transport will be described in more detail in the body of the recommendation. The major elements include, first, the Entrance Facility, which connects the IXC POP to the LEC Serving Wire Center. One or more Interoffice Channels provide a path between the Serving Wire Center and the Local Central Office serving the end user. The Interoffice Channel can be a direct link over a dedicated facility (where traffic volumes warrant), or part of a common facility connected via the Access Tandem where traffic from multiple IXCs is aggregated. As explained below, in Florida, Local Transport is currently charged at a single rate per minute of use assessed alike to all IXCs whether their traffic is transported via dedicated or common facilities.

History of Federal Policy on Local Transport

In the original MFJ, an "Equal charge per unit of traffic" rule was imposed, according to the terms of Appendix B, entitled Phased-In BOC Provision of Equal Exchange Access. Specifically, this provision required that for a period of time that was originally scheduled to end September 1, 1991,

... the charges for delivery or receipt of traffic of the same type between end offices and facilities of interexchange carriers within an exchange area, or within reasonable subzones of an exchange area, shall be equal, per unit of traffic delivered or received, for all interexchange carriers; ...

This "Equal Charge" rule of the MFJ was designed to allow new IXCs an opportunity to compete with ATT-C in an effort to gain some market share. (Guedel TR 137) By requiring that all Local Transport traffic be charged at the same rate per minute of use, the rule precluded ATT-C from taking advantage of efficiencies that would accrue by virtue of its market size and location of its facilities.

FCC Docket 91-213, In the Matter of Transport Rate Structure and Pricing, was initiated to determine the new rate structure for Local Transport. An FCC order released in October 1992 set up an interim Local Transport structure that is currently due to expire at the end of 1995. That order identified and set rates for the different types of transport configurations, and granted limited pricing flexibility to the RBOCs (Regional Bell Operating Companies). A subsequent order (also issued October 1992) required Non-Recurring Charge (NRC) waivers to allow IXCs to reconfigure their trunking arrangements. This NRC waiver, which has currently been extended through 1994, has enabled IXCs to adapt to the new Local Transport rate structure approved by the FCC, without incurring all the expenses typically associated with such reconfiguration.

In FCC Docket 91-141, on Expanded Interconnection, in an August 3, 1993 order, the FCC adopted rules for switched transport collocation by AAVs, allowing interconnection into LEC Central Offices, Serving Wire Centers, tandems, and remote switches. That order facilitates the ability of AAVs to compete with LECs for the provision of switched transport services provided to IXCs. The NRC waivers discussed in the previous paragraph are designed to encourage IXCs to continue to utilize

the RBOC networks in the face of competitive alternatives.

History of Local Transport Policy in Florida

Florida's Local Transport rate element was originally designed as a minute-of-use rate like the FCC's rate. However, unlike the federal rate structure, Florida's usage rate was not distance sensitive. The purpose of establishing a non-distance sensitive rate structure for all access traffic within an Equal Access Exchange Area (EAEA) was to encourage IXCs to serve both large and small (urban and rural) communities. (Florida, in a policy action unique to itself, established twenty-two EAAs in 1984 to match the expected configuration of access tandems, and to encourage IXCs to use these tandems to aggregate their traffic.) (Gillan TR 585) Thus, in Florida, although rates vary by LEC, each LEC currently assesses Local Transport at the same rate per minute. That minute-of-use rate applies whether or not the transport facility is dedicated or switched.

The rest of Florida's intrastate switched access rate elements mirrored the FCC rate levels at the beginning. Rate levels were uniform statewide at the outset, but diverged later after Commission decisions in DN 860984 (NTS cost recovery).

The current issues to be addressed in the Local Transport portion of this proceeding are 1) whether Florida's LEC local transport rates should be restructured and repriced either to address forthcoming competition, or to match the rate structure and levels approved by the FCC, and/or to improve the rate design; and 2) if so, how this should be accomplished.

ISSUE 19: Should the Commission modify its pricing and rate structure regarding switched access transport service?

- a) With the implementation of switched expanded interconnection.
- b) Without the implementation of switched expanded interconnection.

RECOMMENDATION: Whether or not the Commission approves the implementation of expanded interconnection for switched access, it should still proceed with the restructure of Local Transport.
[NORTON]

POSITION OF PARTIES

INTERMEDIA: (a) Yes. (b) Yes.

ALLTEL: Agree with Southern Bell.

ATT-C: Yes, in either case.

FCTA: The Commission should modify its pricing and rate structure for switched transport only after implementation of switched expanded interconnection.

GTEFL: Yes. The Commission should modify its switched access transport pricing and rate structure regardless of whether switched expanded interconnection is authorized.

IAC: IAC does not object to the LECs' proposal to restructure switched transport rates, but IAC objects strenuously to the LECs' proposed initial pricing of the restructured switched transport services because they are not cost-based.

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

will promote a more efficient use of the public switched network.

SPRINT: The Commission should only modify its switched transport pricing and rate structure with the implementation of switched expanded interconnection. Without expanded interconnection, competition will not exist for intrastate switched transport and the current "equal charge" local transport structure would remain appropriate.

TELEPORT: The Commission should mirror the FCC's rules.

TIME WARNER: The Commission should modify its pricing and rate structure for switched transport only after implementation of switched expanded interconnection.

UNITED/CENTEL: Yes. The restructure of local transport (LTR) has merit even if it is not in the context of expanded interconnection. However, it is critical that if switched access expanded interconnection is implemented, that it be accompanied by Local Transport Restructure.

OPC: No position.

STAFF ANALYSIS:

Summary of Parties' Positions

All except three of the parties participating in this docket advocate restructuring Local Transport whether or not Expanded Interconnection is approved. (Lee TR 301; Hendrix TR 406-07; Poag TR 799; Guedel TR 122; Gillan TR 582) FCTA, Sprint and Time Warner propose that Local Transport should only be restructured if Expanded Interconnection is approved. (FCTA Brief, p.15; Rock TR 653; Time Warner Brief, p. 15)

Staff Analysis and Recommendation

The current intrastate Local Transport rate structure is a single Minute-of-Use (MOU) charge assessed to every carrier no matter what kind of trunking capacities or configurations they use or their volume of usage. This LEC rate structure still matches the expired MFJ (Modified Final Judgement) requirement that LECs charge an "equal rate per minute of use." Non-LEC competitive providers of local transport, when authorized to offer this service in Florida, will charge customers (IXCs) more closely to the actual cost of providing service. Expanded Interconnection as well as the restructure of Local Transport

have already been authorized on the interstate level, and now both LECs and their competitors offer flat-rated transport options for interstate switched access. (Rock TR 653; EXH 22, 34, 49, 50)

Of the three intervenors who oppose the restructure if the Commission does not approve expanded interconnection, two of them, FCTA and Time Warner, submitted no testimony on the issue. The language in their briefs was identical, citing Sprint witness Rock's testimony that LECs would not face effective competition if expanded interconnection were not approved for switched access. (TR 653) It is interesting to note that Sprint's position is at odds with those of the other IXCs in this case.

In staff's opinion, Sprint, FCTA and Time Warner have ignored the efficiencies associated with a rate design that matches the various ways in which the service can be provided. They have also ignored the level of competition that exists today. (EXH 32) For example, in its brief, Sprint even goes so far as to say that "AAVs cannot have a presence in the intrastate market in Florida until the Commission issues an order approving expanded interconnection for switched access." (BR, p.8)

In opposition, GTEFL witness Lee testified that even without expanded interconnection, LECs are already facing competition in the intrastate access market, citing as an example the fact that today IXCs can order flat-rated special access from either LECs or AAVs to avoid switched access transport usage rates. Witness Lee also noted that Intermedia has an established network in the Tampa area and that several other AAVs, including MFS Telecom, FiberNet, Jones Lightwave, and Florida Digital Media Partners are either competing or have announced plans to expand in that area. He also stated that other competitors such as cable, PCN, STS, cellular and VSAT providers currently compete for GTEFL's largest customers in the Tampa/St. Petersburg area. (TR 302)

Staff recommends that if the Commission approves expanded interconnection for switched access, then the restructure of Local Transport rates should also be approved to allow the LECs to offer transport options more in line with cost causation and network design. Even if this Commission declines to authorize expanded interconnection for switched access, it is still appropriate to restructure Local Transport. Staff agrees with the parties that the LECs' proposals constitute a better, more accurate rate design even if the Commission and/or the Legislature does not allow competition over intrastate switched access.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

Moreover, the FCC has already restructured interstate Local Transport rates and has approved switched expanded interconnection for interstate. The majority (about 70%) of switched transport traffic is interstate. (EXH 32) Therefore, even if Florida does not allow intrastate competition over switched access, most of the traffic going over transport trunks will be subject to competition anyway. IXCs have already been redesigning their transport trunk configurations to provide the most economical routing arrangement.

ISSUE 20: If the Commission changes its policy on the pricing and rate structure of switched transport service, which of the following should the new policy be based on:

- a) The intrastate pricing and rate structure of local transport should mirror each LEC's interstate filing, respectively.
- b) The intrastate pricing and rate structure of local transport should be determined by competitive conditions in the transport market.
- c) The intrastate pricing and rate structure of local transport should reflect the underlying cost based structure.
- d) The intrastate pricing and rate structure of local transport should reflect other methods.

RECOMMENDATION: The intrastate pricing and rate structure must reflect the underlying costs, and should encourage efficient utilization of the LEC network. The following guidelines should be used to evaluate LEC Local Transport tariff proposals:

- * The intrastate pricing and structure of Local Transport should accurately reflect the underlying cost structure. Prices should be set such that they recover incremental costs and provide a contribution to joint and common costs.
- * The relationship between prices for various transport options should encourage the optimal and most efficient utilization of the LEC network.
- * It is not necessary that contribution levels between the three types of switched transport be absolutely identical. However, contribution levels should not be so disparate as to be unreasonably discriminatory or as to distort demand.
- * This Commission should not establish a policy of "market-based" pricing since it cannot effectively monitor or evaluate such a policy.
- * Mirroring interstate rate levels is neither necessary nor desirable as a rate design policy.

POSITION OF PARTIES

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

ALLTEL: Agree with Southern Bell.

ATT-C: The Commission should approve rates that:

- 1) track the relationship approved by the FCC,
- 2) maintain revenue neutrality with respect to the intrastate transport service for each LEC, and
- 3) are calculated based upon existing rather than hypothetical network configurations.

FCTA: If the Commission changes its policy on the pricing and rate structure of switched transport service, the new policy should be based on statements "a," "b" and "c" above.

GTEFL: The Commission should allow the LECs to mirror interstate tariff structure. Rates should not necessarily be mirrored, but rather determined by market factors.

IAC: IAC believes that the pricing of local transport must reflect the underlying costs incurred by the LEC in providing the service. Non-cost based rates discriminate among access customers and would disrupt interexchange competition. Thus, both market-based pricing, and mirroring of non-cost based interstate rates is inappropriate.

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

SPRINT: The Commission should adopt the federal structure for switched transport which allows LECs to price dedicated transport facilities on a flat-rate basis. However, the rate levels for

transport facilities should reflect the underlying costs of the service. Specifically, rates for transport services should be cost-based resulting in a price relationship for DS1 and DS3 direct trunked transport that reflects the cost relationship between the two services.

TELEPORT: The Commission should mirror each LEC's interstate filing, respectively.

TIME WARNER: If the Commission changes its policy on the pricing and rate structure of switched transport service, the new policy should be based on statements "a," "b" and "c" above.

UNITED/CENTEL: United's and Centel's LTR filings essentially mirror the tariffs filed in the interstate jurisdiction. However, those filings incorporate elements of both b) and c) above. By restructuring local transport such that dedicated transport rates are based on existing special access rates, local transport becomes more cost-based as well as more market-based.

OPC: No position.

STAFF ANALYSIS:

Summary of Parties' Positions

Some parties argued that the rate structure adopted by the FCC should also be adopted by this Commission. (Guedel TR 121-122; Gillan TR 582; Rock TR 654;) Other parties, including FCTA, GTEFL, Time Warner and United/Centel, acknowledged that their proposals or positions incorporated elements of mirroring, market-based pricing, and cost-based pricing, stating or inferring that these policy choices were not necessarily mutually exclusive. (FCTA BR, pp. 15-16; GTEFL BR, p. 34; Time Warner BR, p. 16; Poag TR 799-800)

The consensus of the parties is that the structure adopted at the interstate level, which includes both tandem and dedicated switched transport options as well as a separate usage based charge designed to ensure revenue neutrality, is the appropriate rate design to adopt. Those parties who prefer the interstate structure do so on the basis that it is more closely related to the way the network is designed and hence the manner in which costs are incurred.

The parties' positions divide along somewhat predictable lines with respect to rate levels. All the LECs advocate a

policy of allowing them to set their own "market-based" rates. (Lee TR 304; Hendrix TR 418; Poag TR 799) Teleport is the only party to advocate mirroring interstate rates as a permanent policy. (Brief, p. 23) The LECs, however, have proposed that current interstate rate levels be adopted as a starting point. ATT-C, along with FCTA, IAC, Sprint, Time Warner and Intermedia, advocate the adoption of a policy of "cost-based" rates. (FCTA BR, p. 15; Gillan TR 587; Rock TR 654; Time Warner BR, p. 16; Intermedia BR, p. 36) ATT-C however, like the LECs and unlike the rest of the IXCs, has proposed that, except for the Residual Interconnection charge, the FCC rate levels be used to start with. (Guedel TR 122)

Policy on Rate Structure

The rate structure as proposed in the LECs' tariffs was designed to assess charges in a manner similar to the way in which costs are incurred, and the way traffic is routed through the network. Although an IXC orders trunking facilities of various capacities depending on how much traffic it expects to haul between given points, the current rate structure provides that the same rate be charged, per MOU. As discussed in the case background, this design had an intended purpose when it was initiated. However, it also encourages IXCs to order excess trunking capacity to provide for peak periods. (Hendrix TR 456)

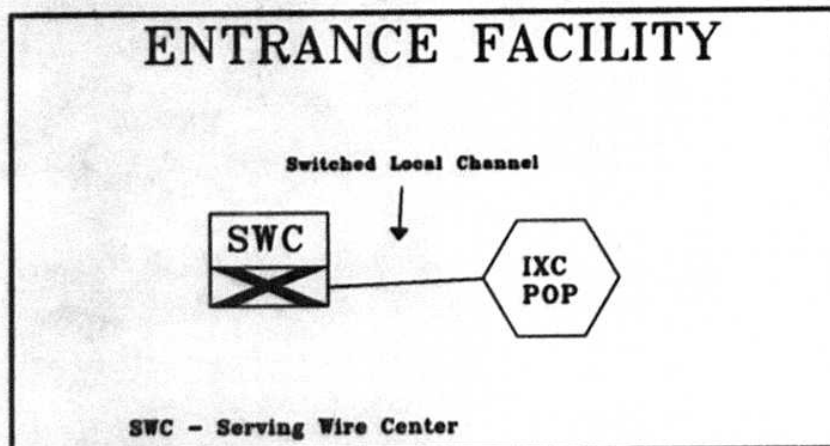
DOCKET NO. 921074-TP
NOVEMBER 18, 1994

In this docket, the LECs have proposed to mirror the rate structure approved by the FCC for interstate traffic. As noted above, all parties endorse the proposed structure. The rate elements consist of:

Entrance Facility:

Switched Local Channel - Connects the IXC POP to the LEC Serving Wire Center (SWC). The structure consists of a flat monthly rate per channel, either Voice Grade (VG), DS1, or DS3.

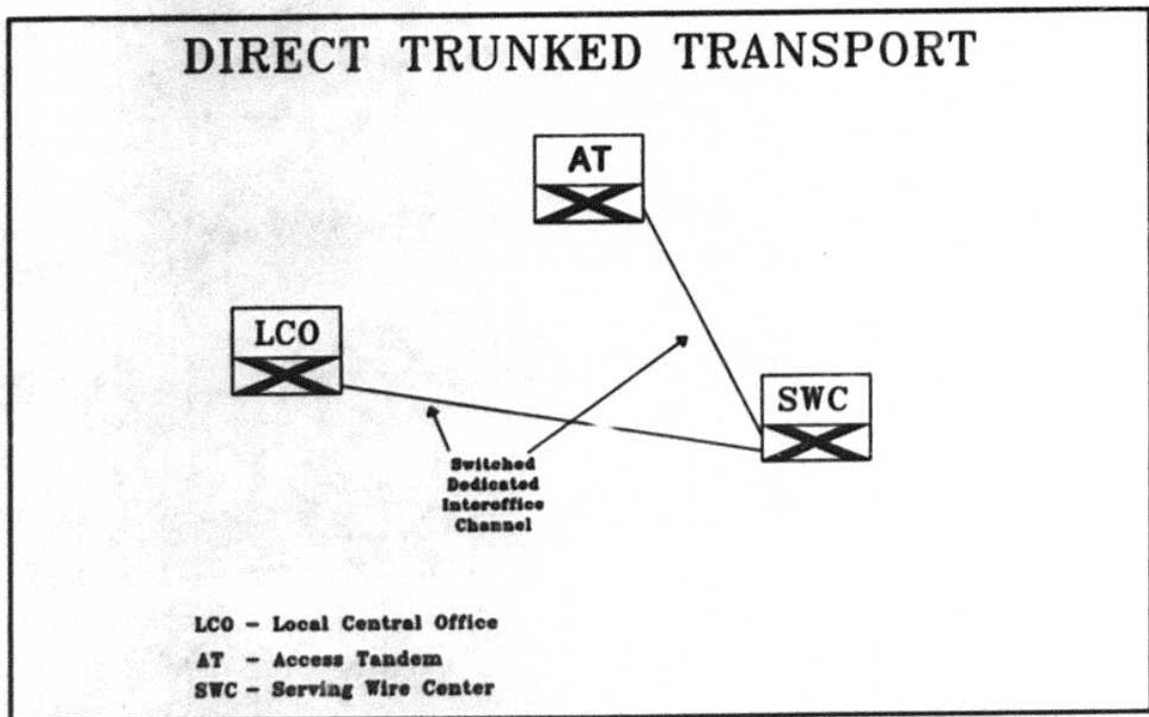
Diagram 3



Direct Trunked Transport:

Switched Dedicated Interoffice Channel - Connects the IXC SWC with either the access tandem or the end user's local central office by means of a dedicated facility. Two part rate structure consists of a flat monthly fixed rate plus a mileage charge, both of which vary depending on the facility ordered (VG, DS1, or DS3).

Diagram 4

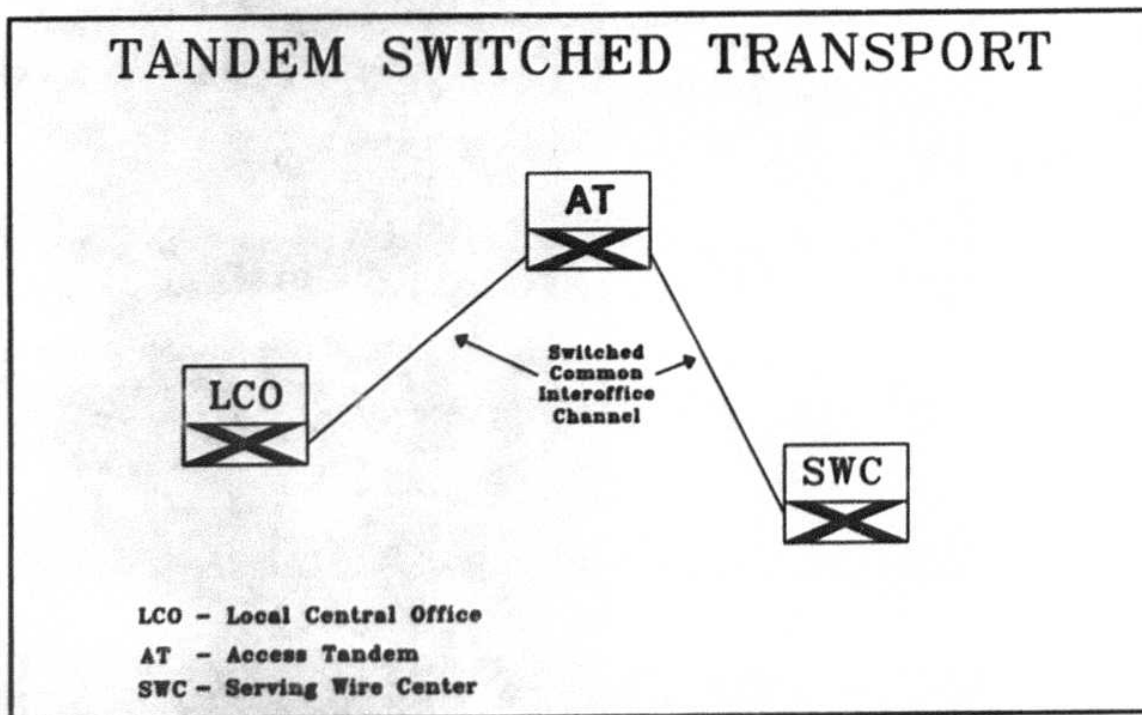


Tandem Switched Transport:

Switched Common Interoffice Channel - Connects the IXC SWC to the access tandem or the access tandem to the end user's Local Central Office over common facilities. Two part rate structure consists of a usage-based termination charge (per minute of use (MOU) per termination) and a distance sensitive usage-based facility charge (per MOU per mile).

Access Tandem Switching - Assessed to traffic that is routed through the access tandem. Non-distance sensitive usage rate.

Diagram 5



Residual Interconnection Charge (RIC):

Usage-based MOU rate assessed to all switched access users whether served by the LEC or some other vendor. (Guedel TR 157) Purpose of the element is to maintain LEC revenue neutrality with respect to Local Transport revenues. The FCC intends that this element will eventually be eliminated, as Florida's BHMOC has been.

An IXC may select different capacities for each path (i.e., connection between the SWC and the end user's central office) depending on the projected amount of traffic it expects to receive from or send to a particular location (central office). In that way, the DS1 and DS3 facility offerings, plus the tandem switching option can serve to encourage IXCs to utilize the LEC network more efficiently than does the current uniform minute-of-use rate structure. Having the same rate structure for both interstate and intrastate traffic provides some efficiencies since the traffic itself is not segregated by jurisdiction during routing. A similar structure would serve to facilitate accurate reporting of PIU as well.

Although not every party believes that a restructure of Local Transport is necessary unless the Commission also approves expanded interconnection, all parties endorse the interstate rate structure if a change is made. Staff recommends that the Commission adopt the Direct Trunked/Tandem Switched rate structure proposed by the LECs and currently in use on the interstate side.

Policy on Rate Levels

Mirroring

Of all the proponents of mirroring (matching) the LECs' current interstate rates, only Teleport actually advocates mirroring rates as a policy; their witness did not specifically address the issue however. The LECs advocated using their interstate rates as a starting point, after which the Commission should allow rates to be based on market factors such as demand, competitive conditions, and number of available substitute services. (Lee TR 304; Poag TR 799-800; Hendrix TR 418)

Predictably, the opponents of mirroring were primarily opposed to the rate levels approved by the FCC. For example, IAC witness Gillan argues that the rate levels proposed by Southern Bell are unduly discriminatory because the contribution levels for Tandem Switched and DS-1 users are "dramatically inflated" relative to contribution levels for DS-3 users. He believes that "a strategy of discriminatory contribution among the different transport options is equivalent to favoring large carriers over small, and favoring urban areas over secondary markets." (TR 597-598)

No party really addressed the concept of mirroring rate levels separately from the actual interstate rates in effect. Staff, however, does not believe that mirroring for the sake of mirroring has any merit in this case. Although the LECs have argued vociferously that the rate levels should mirror the interstate for purposes of administrative ease and PIU reporting, they do not want to be bound to the interstate rates as a policy requirement. (Hendrix TR 409, 418; Lee TR 304-305)

Intrastate switched access rate levels have been and are currently different from their interstate counterparts. Even if the Commission decided to adopt the interstate rates for Local Transport, the Carrier Common Line and the Local Switching rate elements would still be different. Local Transport makes up only about 16% of Southern Bell's intrastate switched access revenues, and about 3% of GTE's. (Hendrix TR 438; EXH 17) So the remaining revenues would continue to be recovered under rates that are different from those set by the FCC.

Aside from the fact that staff believes that some of the rate levels approved by the FCC are inappropriate, no party has offered any reason why mirroring should be adopted as a policy approach.

Market-based Pricing

Appropriate market rates, according to GTEFL, "exceed LRIC [Long Run Incremental Costs] and provide contribution towards recovery of the company's common costs. The amount of contribution for each separate service (i.e., DS1 or DS3) should be driven by specific market conditions for each." (EXH 19) Southern Bell witness Hendrix argued strenuously that "if he were "forced to a certain rate level and ... forced to set ... rates based on certain formulas other than just covering costs, then I will not be able to compete with other transport providers in the

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

marketplace because of my rate levels." (TR 474) Witness Hendrix testified that only by allowing him to set his rates based on what competitors are charging could Southern Bell effectively compete. (TR 448)

There seems to be an implicit assumption by the LECs that the current interstate rates are at least somewhat market-based. However, the FCC set the interstate rates based on rates and rate relationships in High Capacity tariffs in effect in 1992, which the LECs propose to mirror now. Staff is not sure that this is evidence of actual market-based pricing. At least, the pricing in question would not necessarily be based on current market conditions. None of the non-LEC intervenors advocate the use of market-based pricing, which is interesting since it would presumably tend to favor at least the IXCs with substantial traffic in high volume areas, such as ATT-C.

IAC's primary concern is that the LECs could "selectively reduce the contribution levels for only some access customer(s), while maintaining higher levels on captive interexchange carriers that have no (or less) choice." (Gillan TR 592). IAC witness Gillan argued that there will be substantial differences in the relative degrees of competition among the various transport options. DS-3 service, according to Gillan, would be the most competitive since it represents a high concentration of traffic between two points. DS-1 service would be less competitive, and the Tandem Switched traffic represents very unconcentrated demand that would not have competitive alternatives. Thus Gillan's concern is that the lack of competitive alternatives would enable the LECs to "market price" the Tandem Switched Transport (small volume facilities) to recover much higher levels of contribution relative to the rates of the other transport options, a practice which he labels discriminatory. (TR 592)

In his testimony, ATT-C witness Guedel endorses the proposed rate structure, is silent on the proposed interoffice channel rate levels, but attacks the LECs' methods of calculating the RIC. (TR 122, 138) Staff believes that it is significant that ATT-C, who is the largest IXC, does not specifically advocate either the rate levels proposed by the LECs, the concept of mirroring interstate rates or market pricing. Instead, at hearing, witness Guedel stated that rates should be "cost-based." (TR 173-174) It is interesting simply because ATT-C, since it is the largest IXC, stands to benefit the most if LECs are allowed to "market price" their transport services.

It is difficult from a regulatory point of view to evaluate "market-based" rates. A policy of allowing "market-based" rates is essentially a relaxing of regulation. It would be the effective policy established if the Commission decided in Issue 14 that LECs, as transport providers, should not have to file tariffs. If the Commission, on the other hand, intends to monitor the market, or if it concludes that the market is not sufficiently competitive, then some other policy would be more appropriate.

Cost-based Pricing

Parties interpreted the term "cost-based rates" in different ways. For example, IAC witness Gillan's approach requires determining the difference in cost between a stand alone DS1 and 1/28th of a DS3 facility, and setting rates that vary only by the difference in those costs. The effect of this approach is that the amount of contribution per DS1 equivalent, over and above cost, would be identical between DS1 and DS3 services. (TR 587) Similarly, Sprint witness Rock states that cost-based rates would result in a "price relationship for DS1 and DS3 direct trunked transport which is the same as the cost relationship between the two services." (Rock, TR 654).

GTEFL, on the other hand, defined the term differently. At the least, its definition provided room to reach a very different rate level from that reached by IAC or Sprint. GTEFL defines cost-based rates as "rates that are supported by and are above Long-Run Incremental Costs." They further state that LRIC is appropriate to use as a price floor, not for setting rates. (EXH 19) Neither Southern Bell nor United/Centel offered a definition of cost-based pricing although their discussions at hearings comported with the meaning proffered by GTEFL. The other parties who endorsed the concept, ATT-C and Intermedia, did not define the term.

IAC witness Gillan focused on rate relationships in his analysis of what constitutes appropriate pricing. For example, the point at which a Tandem Switched transport customer converts to DS1 Service, or a DS1 customer converts to DS3 Service, should be when it is most economical and efficient for the LEC to transport the traffic that way. For that to occur, the LEC prices for each of those options should encourage carriers to choose the appropriate option and to convert at the optimum time. Staff agrees with the analysis of witness Gillan on this point:

Logically, IXCs should use tandem transport where they have low traffic volumes and can't load dedicated circuits very efficiently. As the IXC's traffic volume grows, the IXC should be encouraged to move traffic to dedicated circuits when the IXC can load those circuits efficiently. Finally, at very high traffic volumes it might make sense for the IXC to perform DS1-to-DS3 multiplexing rather than the LEC, thereby ordering DS3 units of capacity instead of DS1. Efficient network incentives exist when there are rational and consistent cross-over points between the three interoffice options: TST, DS1 and DS3. If the price relationships don't reflect cost relationships, these incentives will be seriously distorted. (TR 696)

Although Staff does not agree with witness Gillan that contribution levels must be identical across services to prevent discrimination, we do believe that they must be reasonably close. LECs should have a certain amount of flexibility to respond to competitive realities. But LEC prices should not distort economic demand for the various service options.

Finally, staff believes that if a given market is reasonably competitive, "market-based" prices, e.g., those similar to what a competitor charges, should not differ significantly from "cost-based" prices, i.e., those that bear a reasonable relationship to costs. This is because in a truly competitive market, prices are driven towards costs. To the extent that an entity can sustain prices substantially above costs, the market is not effectively competitive.

Staff Recommendation

Rate relationships should make sense. The rate structure should reflect the way that costs are incurred and encourage efficient utilization of the LEC network. To accomplish this, staff believes that the intrastate pricing and rate structure must reflect the underlying costs. Staff recommends that the following guidelines should be used to evaluate LEC Local Transport rate proposals:

- * Prices should recover incremental costs and provide a contribution to joint and common costs. LECs should be required to justify the contribution levels that they propose.

- * The relationship between prices for various transport options should encourage the optimal and most efficient use of the LEC network.
- * The amount of contribution need not be identical between the Tandem Switched and Direct Trunked Transport options. However, the difference between contribution levels should not be unduly discriminatory or serve to distort demand for the various options. Therefore, the differences in contribution levels should not disguise the differences (or similarities) in costs.
- * If the Commission requires that LECs file Local Transport tariffs, then it should not adopt the concept of "market-based" pricing as a general policy. Market-based pricing would presumably occur if the Commission decided not to require tariffs to be filed. That is not to say that pricing decisions should not take into account cross-elastic services and other market factors, but rate relationships should, as a matter of policy, bear some resemblance to the underlying costs, which may not occur with "market pricing" in an imperfectly competitive marketplace.
- * Mirroring interstate rate levels is neither necessary nor desirable as a rate design policy. If, after all other factors are taken into account, a recommended rate level is close to the interstate rate then it can possibly be "fine-tuned" for the sake of administrative ease.

ISSUE 21: Should the LECs proposed local transport restructure tariffs be approved? If not, what changes should be made to the tariffs?

RECOMMENDATION: No. No later than 90 days following the issuance of the final order in this phase of the proceedings, the LECs should be required to refile their Local Transport tariffs according to the guidelines identified in Issue 20. In addition, the following should also be required to support their revised filings:

- 1) LECs should be required to develop estimates of their costs for their Entrance Facilities, Tandem Switched, and Direct Trunked transport rate elements to serve as benchmarks against which to measure their pricing proposals. The LECs should provide incremental cost estimates for each of these elements. In addition, to the extent possible the LEC should identify the amount of any costs that, while not directly attributable to one of these elements, is associated with this service (i.e., group-specific costs).
- 2) LECs should provide an analysis justifying the contribution levels which they incorporate into their proposed rates.
- 3) LECs should include a cross-over point analysis in their filings. The cross-over point analysis should cover different mileage distances, and cross-over points should be calculated for Entrance Facilities separately from interoffice channels. The RIC should not be included.
- 4) The Commission should allow the use of demand estimates for the RIC based on networks as currently configured. The NRC waiver has been in effect for almost two years now and is scheduled to expire at the end of 1994. It was designed to encourage more efficient trunking configurations on the part of the IXCs. Therefore the LECs should use 1994 demand estimates using as much actual data as is available in the timeframe allowed. Staff believes that the results would be more accurate.

DOCKET NO. 921074-TF
NOVEMBER 18, 1994

POSITION OF PARTIES

INTERMEDIA: No. The intrastate pricing and rate structure of local transport should reflect the underlying cost based structure.

ALLTEL: Agree with Southern Bell.

ATT-C: The Commission should approve the rates and structure proposed by Southern Bell. Furthermore, the Commission should approve the structure and all rates except for the RIC filed by GTE Florida, Sprint/United, and Sprint/Centel. Those companies should be ordered to refile a RIC which is based on a historical rather than a reconfigured network.

FCTA: No. Tariffs should only be approved consistent with other decisions reached in this docket and upon a finding that there is effective competition for switched transport services.

GTEFL: Yes. GTEFL's proposed tariff should be approved without modification, for the reasons discussed in the Company's response to Issues 19 and 20, above.

IAC: The LEC's proposed local transport restructure tariffs should not be approved. The Commission must examine the underlying costs for the three transport options and require that LEC rates be modified to reflect these costs.

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

SPRINT: No. Sprint recommends that direct trunked transport rates reflect the underlying costs. In the absence of cost studies, however, Sprint recommends a DS3:DS1 price relationship of 22:1. Sprint believes that a DS3:DS1 direct trunk transport price relationship of 22:1 more closely reflects the current fiber optic technology and the shared use nature of the interoffice transmission network.

TELEPORT: The Commission should mirror the FCC's rules.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

TIME WARNER: No. Tariffs should only be approved consistent with other decisions reached in this docket and upon a finding that there is effective competition for switched transport services.

UNITED/CENTEL: Yes. United's and Centel's LTR filings should be approved. This restructuring has already occurred in the interstate jurisdiction, and is a natural phase in the evolution of switched access rates becoming more reflective of costs. Moreover, the current local transport rate structure is incompatible with attempts to increase competition for switched transport services, i.e., switched access expanded interconnection.

OPC: No position.

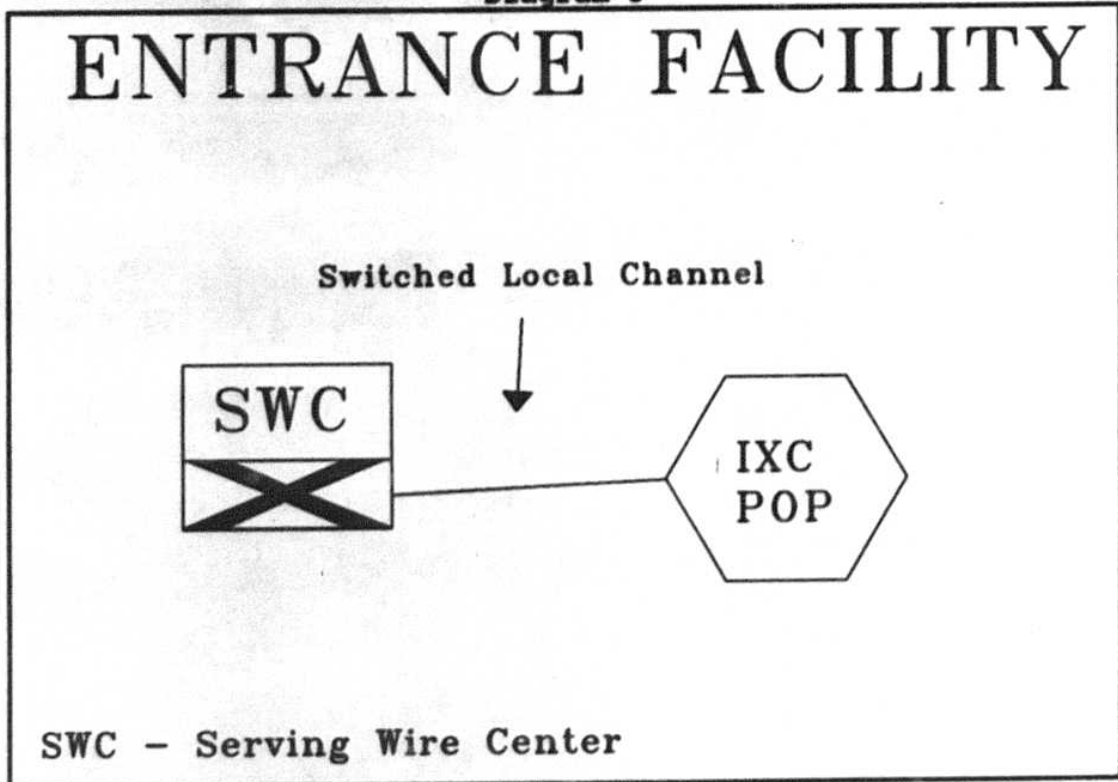
STAFF ANALYSIS:

Description of LECs' tariffs

The rate structures of the proposed LEC tariffs all match their interstate tariffs. The rate levels also match their respective interstate rates with a few exceptions that are discussed later on. All the LECs have proposed basically identical rate structures. The rate elements were identified in Issue 20 and are further explained below. Table 21-1, located at the end of this issue, shows the rates proposed by the LECs for the major rate elements.

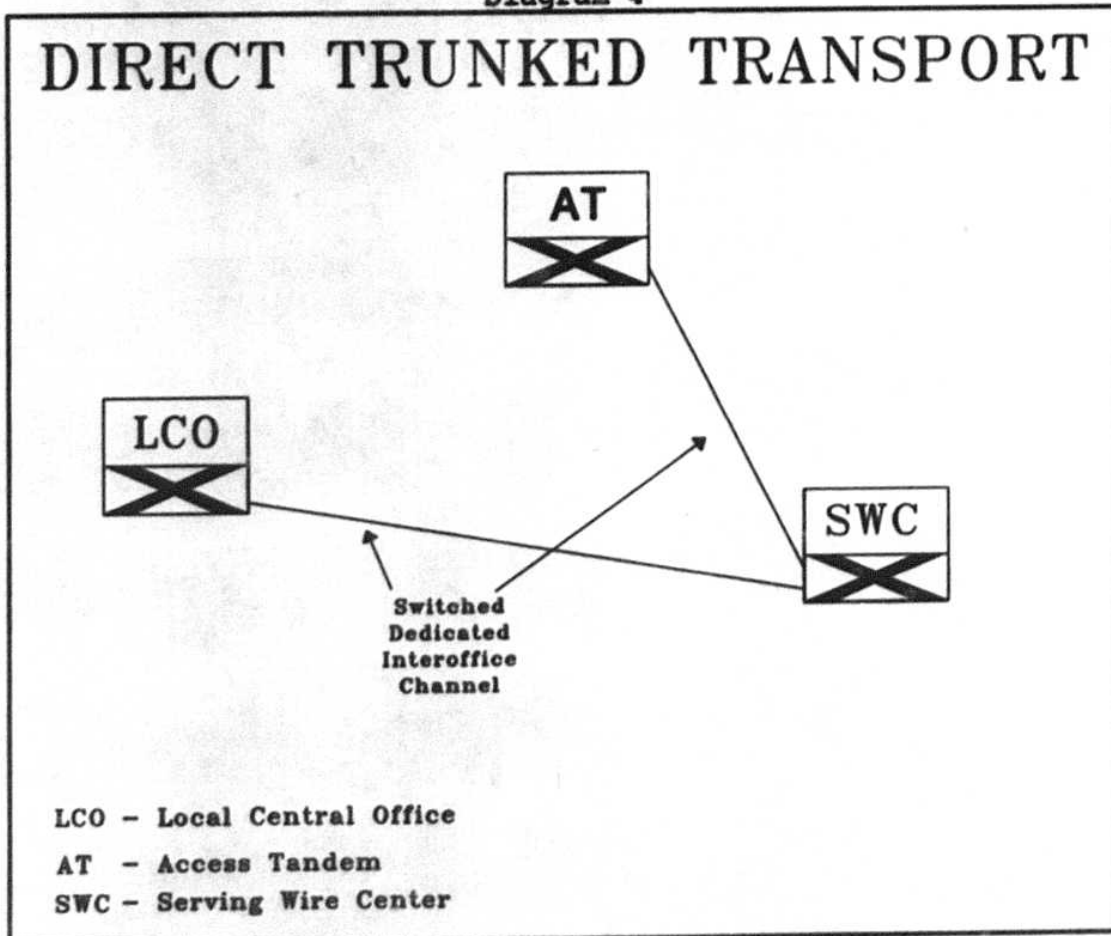
- 1) **Entrance Facility:** is the Switched Local Channel facility between the IXC POP and the LEC Serving Wire Center. It also provides the network facility interface at the IXC POP. The Local Channel is provided at Voice Grade (both 2-wire and 4-wire), DS1, or DS3 capacities. The proposed rate is a flat rated monthly recurring charge per local channel. (For DS1 Service only, GTEFL varies this structure slightly by employing different rates for first and additional systems.)

Diagram 3



- 2) **Direct-Trunked Transport (DTT):** consists of the Switched Dedicated Interoffice Channel facility that provides interoffice transmission, dedicated to a single customer, between a Serving Wire Center and an end office, or between a Serving Wire Center and an access tandem. Direct Trunked Transport is provided at Voice Grade, DS1, or DS3 capacities. The proposed rate has two components: a flat monthly rate per mile and a flat monthly fixed rate that recovers costs for the termination points. (For Voice Grade Service only, GTEFL has incorporated the fixed termination charges into the mileage charge.)

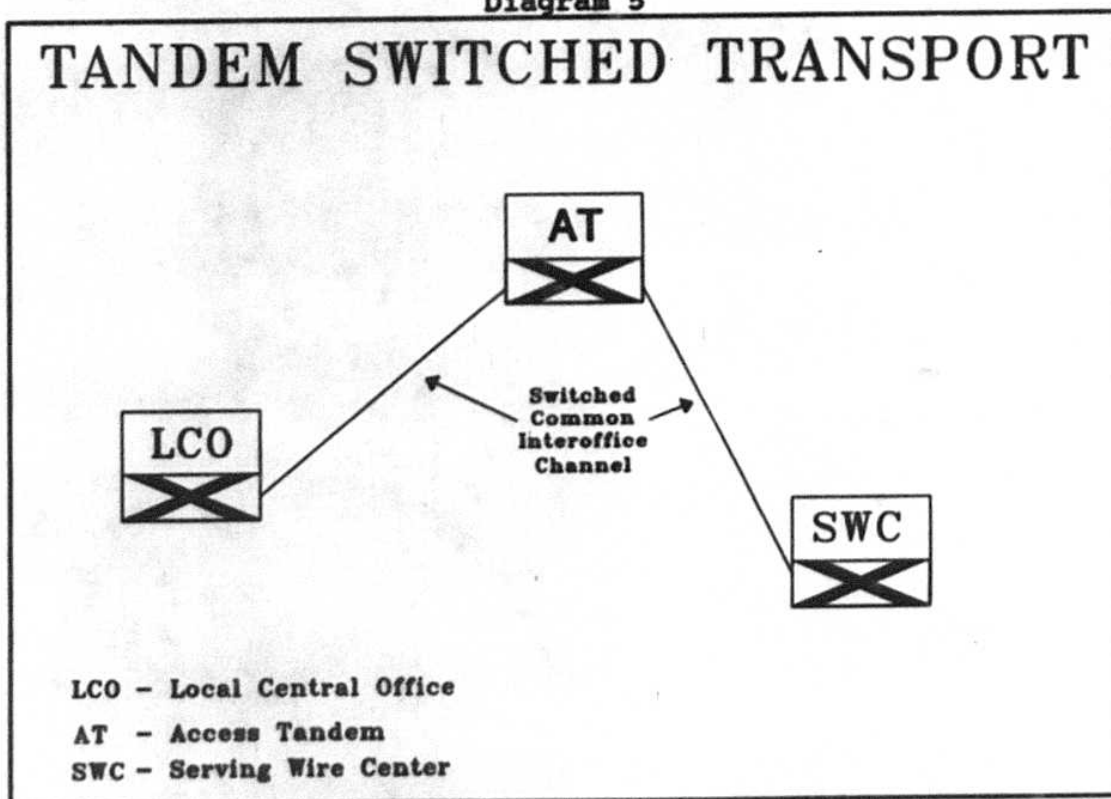
Diagram 4



3) **Tandem-Switched Transport (TST):** provides the switching functions and a Switched Common Interoffice Channel between the Serving Wire Center and the Access Tandem, or between the Access Tandem and the LEC end office, over common facilities. It is composed of three major rate elements:

- * Facility rate, assessed per minute, per mile;
- * Facility Termination rate, assessed per minute;
- * Tandem Switching rate, assessed per minute.

Diagram 5



- 4) **Residual Interconnection Charge (RIC):** is a charge assessed per minute to all IXC customers no matter who their transport provider is. It is a residual element that would make up about 80% of the total revenues for Local Transport under the restructure. It is designed to render the restructure of Local Transport revenue neutral to the LEC.

The LECs also have a Multiplexing charge that is assessed for all DS3-to-DS1 multiplexing arrangements. (Multiplexing refers to the separating of a transmission facility into two or more channels.) This charge is always assessed where a DS3 terminates in an end office, since the end office will only accept circuits at DS1 speed. GTEFL, and United/Centel also assess a DS1 to Voice Multiplexing charge for all DS1 Entrance Facility and Direct-Trunked Transport circuits terminating in an analog end office. SBT does not propose to assess a separate charge for DS1 to Voice multiplexing. (EXH 22, 34, 49, 50)

To illustrate how Local Transport can be provided, an IXC might purchase Tandem Switched Transport between the Access Tandem and the Local Central Office, but have sufficient volume between the Access Tandem and the Serving Wire Center to justify purchasing Direct Trunked Transport. In another case, an IXC might have sufficient volume between a particular Local Central Office and the IXC's Serving Wire Center to justify purchasing Direct Trunked Transport, and not go through the Access Tandem.

The LEC intrastate tariffs mirror their respective interstate tariffs except as follows:

1. The intrastate RIC is calculated to retain intrastate revenue neutrality so it differs from the interstate RIC.
2. GTEFL and United/Centel developed their demand estimates for the RIC assuming that the IXCs had already reconfigured their trunking arrangements more efficiently in response to the Local Transport restructure. (The FCC required that demand based on current or historical configurations be used.) SBT used historical network configurations upon which to base its demand estimate for the RIC.
3. Centel has proposed to eliminate their BHMOC and recover the revenues by means of the RIC. United had originally proposed the same action, but they eliminated their BHMOC in their July 1, 1994 access reduction filing.

Summary of Parties' positions

The LECs advocate the adoption of their own proposed tariffs. Teleport would appear to endorse them too since it believes the Commission should mirror the interstate. ATT-C endorses SBT's tariff since the demand estimates for calculation of the RIC were based on its current network configuration. Since the other LECs assumed reconfigured networks to develop the RIC demand, ATT-C believes that they should be required to recalculate their RICs based on current configurations.

IAC proposes that the rates must reflect their underlying costs, and that rate relationships must send correct economic signals. Witness Gillan testified that rates for Tandem Switched, DS1 and DS3 services should be based on the difference in incremental costs only, and that the level of contribution (per DS1 equivalent) should be the same. His analysis showed that the LECs' proposed rates were not cost-based, and that the rate relationships were perverse. Witness Gillan believes that the rates proposed by the LECs are discriminatory and should not be approved.

The remaining parties do not endorse the LEC proposed tariffs either. However, they did not propose different rates or specific guidelines themselves. Intermedia stated that rates should reflect the underlying costs and cost relationships. FCTA and Time Warner made generalized statements advocating conformity with other decisions reached in this docket.

Sprint witness Rock focused on the DS3:DS1 rate relationship which he testified should have a "cross-over" ratio of 22:1. This means that when an IXC has sufficient traffic such that it requires 22 DS1s, it should "cross over" to a DS3 at that point. Witness Rock developed his proposed ratio by assuming that LECs operate their DS3 transmission systems at approximately 79% capacity. Since there are the equivalent of 28 DS1 circuits in a DS3, 79% of 28 is 22, which is witness Rock's proposed cross-over ratio. Rock states that a ratio of 22:1 is closer to a cost-based relationship and avoids "discriminatory volume based pricing." He argued that this relationship reflects "current fiber optic technology and the shared use nature of the transmission network." (TR 655)

IAC, in its opening statement, cogently summed up the primary focus of the parties' positions on the issue of setting rates for Local Transport:

...there are many points of agreement. For example, no party argues in favor of keeping the equal charge rule. No party opposes mirroring the FCC's rate structure. No party opposes unbundling the entrance facility charges. No party opposes revenue neutrality for the LECs. In fact, IAC does not even challenge the specific prices that the LECs propose for the DS-3 services. The only disagreement we have is over the LECs' prices for DS-1, tandem-switched transport and the residual interconnection charge. They propose one set of prices. We propose another. Those three prices are the only difference between their position and ours. (TR 35)

Analysis of parties' proposals

Based on staff's recommended approach to evaluating the LEC proposed tariffs, the following discussion will address first, the underlying costs of the transport service options, although there was very little information available, and second, the rate relationships between the Tandem Switched and Direct Trunked (DS1 and DS3) offerings. Table 21-1, located at the end of this issue, shows the LECs' rates as proposed in their Local Transport tariff filings.

Since the LECs have vigorously argued that Local Transport rates should not be required to be more than marginally supported by costs, their filings did not include cost data. Southern Bell provided, upon request, such cost data as it had that bore some relation to the intrastate rate elements that it filed. Neither GTEFL nor United/Centel had applicable cost data available. (EXH 17, 46)

DOCKET NO. 921074-TP
 NOVEMBER 16, 1994

Southern Bell provided the following: (EXH 32)

SBT Florida Intrastate Special Access High Capacity Tariff (1994 Costs)			
Local Channel, per Termination	Mileage	Recurring Cost	Proposed LTR Rate
081 Monthly Cost	-	\$83.46	\$133.81
Interoffice Channel			
081 Fixed Cost	-	\$41.64	\$90.47
081 Cost per Mile	1-8	5.23	25.33
	9-25	2.62	25.33
	25+	1.90	25.33
SBT Florida Intrastate Special Access Tariff (1989 Costs)			
Local Channel, per Termination	Mileage	Recurring Cost	Proposed LTR Rate
2-wire Voice Grade	-	\$16.98	\$25.00
4-wire Voice Grade	-	26.97	45.24
Interoffice Channel, Voice Grade			
Fixed Cost	-	\$22.30	\$23.30
Cost per Mile	1-8	.54	1.90
	9-25	.53	1.90
	25+	.50	1.90
SBT Interstate Dedicated Network Access Lines Recurring Costs			
Local Channel	Mileage	Recurring Cost	Proposed LTR Rate
2-wire Voice Grade	-	\$15.45	\$25.00
4-wire Voice Grade	-	28.19	45.24
Interoffice Channel			
Fixed Cost	-	\$15.80	\$23.30
Cost per Mile	0-4	.92	1.90
	4-8	.64	1.90
	8-25	.35	1.90
	25-50	.26	1.90
	50+	.15	1.90

Staff has no way of specifically identifying how relevant this cost data is to the proposed rates in this case. However, it is a simple matter to compare these costs to the equivalent rate element for Local Transport and note any recurring relationships. For example, it appears that in general the cost per mile decreases as distance increases. Yet Southern Bell (and all the LECs) have proposed flat mileage rates. The flat mileage rates appear to cause a distortion in price signals such that at longer distances, it never becomes economic for a user of Tandem Switched Transport for interoffice channels to convert to DS1s, no matter what the volume of traffic is. This will be explained in further detail below.

At staff's request, the LECs submitted as Late-filed hearing exhibits, an analysis of the cost data that IAC witness Gillan developed for the DS1 and DS3 services. They were also instructed to submit what they believed to be the appropriate costs to use as the basis for "cost-based" rates. These were filed under confidential cover. The data provided is incomplete and not really comparable, which, given the timeframe, was perhaps unavoidable. However, the costs as stated by the LECs do not appear to bear much relationship to the rates proposed in the tariff, nor do rate relationships resemble the cost relationships. Staff believes that the LECs should develop better estimates of their costs, to serve as benchmarks against which to measure their pricing proposals.

LECs should be required to develop estimates of their costs for their Entrance Facilities, Tandem Switched, and Direct Trunked transport rate elements to serve as benchmarks against which to measure their pricing proposals. The LECs should provide incremental cost estimates for each of these elements. In addition, to the extent possible the LEC should identify the amount of any costs that, while not directly attributable to one of these elements, is associated with this service (i.e., group-specific costs).

Since the LECs uniformly defend their pricing decisions as "market" driven, staff does not believe that we have sufficient information to recommend or deny a particular level of contribution that a LEC has proposed to incorporate. We can, however, address the relationships between the rate levels. For example, the data in Table 21-2, following, shows the cross-over points at LEC proposed Local Transport rates. A cross-over point is the point at which it is economic, from the customer's (IXC's) point of view, to purchase the next higher grade of service. For example, at the proposed prices for its Entrance Facility, a

Southern Bell IXC customer would purchase DS-1s if it needed 16 or fewer, but would "cross-over" to a DS-3 if it needed more than 16. This is shown by the cross-over point of 16.2. The number in parentheses shows the percent of maximum DS-3 capacity that would be filled at the cross-over point (16.2 ÷ 28 = 58%).

TABLE 21-2

CROSS-OVER POINTS @ LEC PROPOSED LOCAL TRANSPORT RATES					
Entrance Facility					
	SBT	GTEFL	UTF	CTF	Full Capacity
DS1:DS3	16.2 (58%)	3.6/8.5' (11%/30%)	17.7 (63%)	17.7 (63%)	28 DS1s per DS3
Inter-Office Mileage					
Mileage	DS1 to DS3 Cross-Over Point (% Capacity)				28 DS1s per DS3
1	15.0 (54%)	6.9 (25%)	8.2 (29%)	8.2 (29%)	
10	10.3 (37%)	6.6 (24%)	7.6 (27%)	7.6 (27%)	
30	8.9 (32%)	6.5 (23%)	7.5 (27%)	7.5 (27%)	
Mileage	Tandem Switching to DS1 Cross-Over Point in Minutes of Use (% Capacity)				216,000 ^a Minutes per DS1
1	91,905 (43%)	87,347 (40%)	52,967 (25%)	39,334 (18%)	
10	201,035 (93%)	185,104 (86%)	150,252 (70%)	122,883 (57%)	
30	313,790 (145%)	339,036 (157%)	261,444 (121%)	241,824 (112%)	

1 GTEFL proposes to charge different rates for the First & Add'l DS1 trunks.
 2 Assumes 9000 MOU per Voice Grade equivalent (9000 X 24= 216,000).
 SOURCE: Table 21-1

As a point of comparison, the FCC concluded that cross-over points greater than or equal to 9.6 (i.e., the price for 9.6 DS1s equal to one DS3) were appropriate. The FCC made that determination based simply on the existing rate relationships in interstate Special Access tariffs that had already been approved. A cross-over point of 9.6 represents a capacity utilization of 34%. In staff's opinion, that seems low.

In fact, the majority of the DS1-to-DS3 cross-over points sampled in Table 21-2 appear to be quite low, indicating low capacity utilization at the cross-over points. The DS1-to-DS3 cross-over points for Interoffice mileage are much lower than the DS1-to-DS3 cross-over points for the Entrance Facilities, except

for GTEFL. GTEFL's cross-over points appear to be uniformly quite low.

With respect to cross-over points from Tandem Switched transport to DS1, at longer distances, the LECs' proposed interoffice mileage prices are such that it would never be a rational economic choice for an IXC to "cross-over" from Tandem Switched transport to a DS1, no matter what its volume of traffic is. For example, at 30 miles in GTEFL's territory, an IXC would have to carry 157% of a DS1's maximum capacity (in minutes of use) to make it worthwhile to cross over to a DS1. Since this is impossible, it is never worth it for a GTEFL IXC customer to cross over. Staff believes that those are very distorted price signals to give, and that those rates should be adjusted, and that either the Tandem Switched rates or the DS1 rates should be adjusted.

In staff's opinion, a reasonable cross-over point would allow some room for growth, so it should obviously be less than at 100% capacity. Also, the network is not engineered to have circuits operate at 100% capacity on a normal basis. Appropriate cross-over points would probably vary by LEC, given different ways in which networks are engineered and the costs to serve.

We do not think it is appropriate to arbitrarily set a single cross-over point to be applied uniformly to all LECs for all transport services. However, we do believe that LECs should make a showing that explains why the cross-over points achieved in their pricing proposals are appropriate for their network and/or for their competitive situation. Although there is little evidence in the record as to what constitutes efficient cross-over points, staff would expect them to fall in ranges between 14 and 21, which translates to approximately 50-75% capacity utilization at the economic cross-over point. We would expect any proposals that substantially differed from that range to be strongly supported.

On the same basis, there is no scientific method to determining the appropriate level of contribution for all services for all LECs. Contribution (that portion of the total price that exceeds the direct costs of providing the service) should be sufficient to recover some portion of the joint and common costs of the firm. In highly competitive markets, prices are driven downwards towards incremental or marginal costs. This is because potential competitors will enter a market where profit margins are high, and attempt to capture market share by offering the service at a lower price. The incumbent will tend to respond

by lowering its price, and this process continues until prices reach a level below which it is not worth it to stay in business. Conversely, to the extent that a market does not experience much competition, the incumbent can maintain higher prices.

Staff believes that the essence of the LECs' positions is that they want to be free to price at whatever level the market will bear, depending on the relative levels of competition for provision of Tandem Switched, DS1 and DS3 services. This may or may not be appropriate depending on what this Commission views as serving the public interest. The ultimate potential danger is presumably that LEC access pricing practices may drive small IXCs out of the market if they cannot compete with larger carriers because of the difference in their operating costs (i.e., access). IAC witness Gillan testified that: "If the relative prices for these transport options do not reflect relative cost differences, then a system of artificial cost advantages will be introduced that will translate into real competitive disadvantages in the market." (TR 587-588)

IAC witness Gillan argued that rates should be based on costs. Gillan analyzed the relative differences in costs between the DS1 and DS3 based on data filed by the LECs. He assumed, like Rock, that the appropriate starting point was the DS3 since the LEC interoffice networks are mostly fiber and the LECs use DS3s on fiber. He calculated the amount of contribution in the existing DS3 rate, and then added 1/28th (the DS1 equivalent) to the cost of a stand alone DS1 circuit to develop what he calls "cost-based" rates for SBT, GTEFL, and United. (No data was available for Centel.) In this way, each rate had the same level of contribution and varied only by the difference in the per circuit cost of a DS1 versus a DS3.

Staff believes that the analyses of Sprint witness Rock and IAC witness Gillan are useful for analytical purposes since they serve to highlight various relationships that are important in pricing decisions. However, staff believes that their ultimate proposals are too simplistic in the existing market. As discussed above, staff does not believe that a single criterion, be it a cross-over point or a contribution level or even a cost level, is sufficient by itself upon which to base a rate. Rather, all relevant factors should be considered in setting prices for Local Transport rate elements.

Residual Interconnection Charge

As explained earlier in this issue, the RIC is a residual rate element designed to ensure that the LECs remain revenue neutral under the Local Transport restructure. No party objected to this concept, and absent a full revenue requirements rate proceeding staff believes that this approach is reasonable in this case. As discussed by the parties in their testimony and at hearing, revenues from the restructured rate elements will produce only about 20% of the overall revenues from Local Transport. The remainder will be derived from the RIC, if the Commission approves the restructure. Therefore, as shown in Table 21-1, the RIC is the largest of the rate elements.

It should be noted that the LECs are aware that the level of the RIC, which would be paid by all IXCs no matter who they elected to provide their Local Transport, provides an incentive to bypass the switched network. Therefore, the LECs generally plan to reduce the RIC both on the interstate and intrastate level as they can. This process will be very similar to the approach the LECs, with this Commission's approval, took with respect to the BHMOC.

ATT-C, the largest IXC, generally stands to benefit under the proposed LEC tariffs. They are concerned, however, that a RIC calculated based on a "reconfigured" network serves to increase the RIC. The issue of whether it is appropriate to use "reconfigured network" versus a current network configuration arises from the assumptions used by the LECs in developing their demand estimates based on a reconfigured network. ATT-C and IAC have argued that the LECs should not be allowed to assume that the IXCs have reconfigured their interoffice trunking arrangements to accommodate the restructure. The effect of this would be to reduce the IXCs' costs with respect to their transport options. Since the RIC would be designed to maintain revenue neutrality, any reduction in revenues from the transport elements would therefore increase the level of the RIC.

ATT-C and IAC argue that the LECs should not be allowed to base their RIC estimates on such a "reconfigured" network. Rather these parties argue that the LECs should be required to use the demand that exists under the current network configurations to calculate the RIC. In support of their arguments, they note that the FCC required the use of historical network configurations. In Florida, Southern Bell did in fact use a historical network configuration, while GTEFL and United/Centel used a reconfigured network upon which to develop

their demand estimates.

Although ATT-C and IAC are theoretically correct that the reconfigured networks should produce lower local transport revenues which would in turn increase the RIC, GTEFL's calculations are showing that their RIC will decrease using reconfigured demand. At the time of the hearing, GTEFL had not finished investigating this anomaly. However, they were willing to stand by their rate. In any event, staff believes that the emergence of competitive alternatives is of greater importance on the level of the RIC than any other single factor. The LECs usually target their current Local Transport rates when they file tariffs to reduce switched access. This is because they wish to make the RIC as low as possible if and when the restructure is approved.

Staff Recommendation

As discussed in Issue 20, the rate structure proposed by the LECs in their tariffs should be approved by the Commission for use in Florida. Since it reflects the way the service is actually provided, it is an improvement over the current rate structure.

Local Transport rates should bear a relationship to each other and to costs that sends the appropriate incentives for customers to order and load their facilities efficiently. Setting rates is not a science, and in this case, staff does not recommend the adoption of a rigid formula. We do recommend, however, that the LECs be required to revise and refile their transport rates to comport with the guidelines set forth in Issue 20. In addition, the following should also be required in their revised filings:

- 1) LECs should be required to develop estimates of their costs for their Entrance Facilities, Tandem Switched, and Direct Trunked transport rate elements to serve as benchmarks against which to measure their pricing proposals. The LECs should provide incremental cost estimates for each of these elements. In addition, to the extent possible the LEC should identify the amount of any costs that, while not directly attributable to one of these elements, is associated with this service (i.e., group-specific costs).

- 2) LECs should provide an analysis justifying the contribution levels which they incorporate into their proposed rates.
- 3) LECs should include a cross-over point analysis in their filings. The cross-over point analysis should cover different mileage distances, and cross-over points should be calculated for Entrance Facilities separately from interoffice channels. The RIC should not be included.
- 4) The Commission should allow the use of demand estimates for the RIC based on networks as currently configured. The NRC waiver has been in effect for almost two years now and is scheduled to expire at the end of 1994. It was designed to encourage more efficient trunking configurations on the part of the IXCs. Therefore, the LECs should use 1994 demand using as much actual data as is available in the timeframe allowed. Staff believes that the results would be more accurate.

Tariffs should be filed no later than 90 days following the issuance of the final order in this phase of the case.

TABLE 21-1

LEC PROPOSED LOCAL TRANSPORT RATES									
LEC	Entrance Facility		Direct Trunked Transport			Tandem Switched Transport			Residual Interconnection Charge
	Switched Local Channel (Monthly Rates)		Switched Dedicated Interoffice Channel (Monthly Rates)			Switched Common Interoffice Channel		Access Tandem Switching	
	Level of Service	Rate (Per Local Channel)	Level of Service	Rate (Per Mile) (\$)	Fixed Rate (\$)	Rate (per min/per mile) (\$)	Facility Term (per min) (\$)	Rate (per min) (\$)	Rate (per min) (\$)
SRT	VG2W	825.00	VG	1.90	23.30	.00005	.00043	.00078	.00518
	VG4W	45.26	DS0	5.39	90.68				
	DS1	133.81	DS1	25.33	90.47				
	DS3	2,165.87	DS3	200.00	1541.84				
STFL	VG2W	30.43	VG	6.56	-	.00001920	.00040180	.00093290	.01294790
	VG4W	48.69							
	DS1	380.00 1st-Sys 160.00 Add-Sys	DS1	18.26	100.00				
	DS3	1359.69	DS3	116.02	700.52				
UTF	VG2W	20.80	VG	1.45	25.65	.000045	.000156	.001181	.013628
	VG4W	28.55							
	DS1	112.75	DS1	21.70	51.50				
	DS3	2000.00	DS3	160.00	440.00				
CTF	VG2W	20.80	VG	1.45	25.65	.000036	.000143	.001682	.019972
	VG4W	28.55							
	DS1	112.75	DS1	21.70	51.50				
	DS3	2000.00	DS3	160.00	440.00				

VG = Voice Grade; Source

EXHs 22, 34, 49 and 50

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

ISSUE 22: Should the Modified Access Based Compensation (MABC) agreement be modified to incorporate a revised transport structure (if local transport restructure is adopted) for intraLATA toll traffic between LECs?

RECOMMENDATION: LEC rates under the Modified Access Based Compensation (MABC) plan for intraLATA LEC toll should continue to mirror the corresponding switched access rates. Therefore, if the Commission revises or restructures Local Transport rates, then intraLATA transport and intertoll trunking rates between LECs should be modified accordingly. The LECs should file tariff revisions to their MABC tariffs to incorporate the rate structure and levels approved by the Commission in Issue 21, no later than 90 days following the effective date of the new tariffs required in Issue 21. They should also delete the provision in their MABC tariffs that eliminated the need for the MABC rate structure to match switched access. Until new tariffs are approved, the LECs should continue to charge the current Local Transport rate under the MABC plan. [NORTON]

POSITION OF PARTIES

INTERMEDIA: No position.

ALLTEL: Agree with Southern Bell.

ATT-C: Yes. The LECs should settle with each other under the new transport rate levels and structure based upon actual facilities used.

FCTA: No position.

GTEFL: No position.

IAC: Yes. If LTR is appropriate for charging access to IXCs, it also is proper for inter-LEC arrangements.

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

SPRINT: No position.

TELEPORT: TCG takes no position at this time concerning whether

the MABC agreement should be modified. The Commission should mirror the FCC's rules in revising transport structure for intraLATA toll traffic between LECs.

TIME WARNER: No position.

UNITED/CENTEL: Once a revised transport structure is approved, the MABC plan should be modified to reflect the new transport structure. However, any modification of the MABC plan should be addressed in a separate proceeding.

OPC: No position.

STAFF ANALYSIS: The Modified Access Based Compensation (MABC) Plan is a mechanism by which LECs compensate each other for terminating intraLATA interLEC toll calls. Current rate levels are the same as terminating access charges. The point at issue in this case is that if the Commission modifies Local Transport rates for IXCs, should the corresponding rates that LECs pay for transport and termination of their toll traffic be changed accordingly.

Summary of parties' positions

ATT-C and IAC are the only parties who advocate revising the MABC rates now. GTEFL (who does not participate in the MABC plan since they are the only LEC within the Tampa Market Area), and the non-LEC parties took no position since this issue does not directly affect them.

The other LECs prefer to wait until Local Transport rates are permanent before implementing changes to the MABC plan tariffs. These LECs do not object to modifying their MABC rates. (EXH 31; Poag TR 816; Eudy TR 100) Their concern is that the billing and programming changes are too cumbersome and expensive to have to do more than once. (EXH 31) For example, ALLTEL witness Eudy stated at hearing:

Well, I am aware that there are decisions that will take place at the federal level that could affect what happens here to the extent that the Commission may decide to adopt a uniform structure. ... it would be unwise to require modification of such a sophisticated system, data system, as we have for the MABC plan. Which, assuming that something does happen that this becomes an interim structure, we'd simply have to do it all over again. (TR 106)

SBT also stated that changes to the MABC plan should be implemented after Local Transport restructure is implemented for all LECs in Florida. "At that time the MABC plan should move to model the new structure. Since the MABC is simply a means of settlement among the local exchange companies, having the same structure and rates in place for all companies will allow for more efficient administration of the MABC plan."(EXH 32)

Those LECs that do not have their own access tariffs concur in those of Southern Bell. These LECs will continue to concur in all the rates and terms of the restructured Local Transport tariff with the exception of the RIC. There is nothing in the record to indicate that this restructure, if approved by the Commission, would not be implemented for all LECs at the same time. The small LECs who concur in SBT's tariff would need to calculate the level of the RIC for their companies and inform SBT, after the Commission has voted in this case. These rates would then become part of SBT's tariff filing.(EXH 31)

ATT and IAC take the position that LECs should have to charge the same rates to each other that they charge the IXCs. They believe that LECs should be required to pay MABC rates under the new transport structure, based upon actual network routing and facilities used.(Gillan TR 599; ATT-C Brief p. 29)

Several LECs filed for and received approval of intrastate tariffs that broke the link between access charges and MABC rates. They did this in order not to have to change MABC rates if and when a restructure of Local Transport was approved.(Hendrix TR 546) This action was administrative and was not subject to a vote by the Commission. The PSC can reestablish that linkage if it believes it appropriate.(Hendrix TR 546)

Staff Recommendation

Staff believes that if the LECs charge themselves the current Local Transport rate as opposed to one calculated based on the restructured rates, any potential impact on competing carriers would be minimal. Nevertheless, we believe that it is appropriate that the rates the LECs charge for terminating other LECs' traffic should be no different from what they charge IXCs for the same service. The LECs have not shown any undue hardship that would be imposed if they had to do the calculations and programming for a restructured Local Transport rate in the MABC tariff within a reasonable time frame following implementation of the new structure, if approved.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

Therefore, the LECs should file tariff revisions to their MABC tariffs to incorporate the rate structure and levels approved by the Commission in Issue 21 if different from the current structure, no later than 90 days following the effective date of new tariffs required in Issue 21. They should also delete the provision in their tariffs that eliminated the need for the MABC rate structure to match switched access. Until new tariffs are approved, the LECs should continue to charge the current Local Transport rate.

ISSUE 23: How should the Commission's imputation guidelines be modified to reflect a revised transport structure (if local transport restructure is adopted)?

RECOMMENDATION: The policy issue of whether the Commission should continue to require imputation of LEC switched access rates in their toll rates should be addressed in a separate docket. LECs should continue to use the current Local Transport rate element for purposes of access imputation until the Commission has addressed the broader policy issues. [NORTON]

POSITION OF PARTIES

INTERMEDIA: No position.

ALLTEL: Agree with Southern Bell.

ATT-C: A surrogate per minute rate for local transport would have to be developed for each LEC based upon its approved transport rates and the utilization of its network. The remainder of the current imputation guidelines need not be changed.

FOXA: Effective imputation guidelines would require that switched access charges, not actual costs, be covered by LEC toll rates. The Commission should address the subject of imputation in a broader context after this proceeding is concluded.

GTEFL: The imputation guidelines should not be modified in this proceeding. Imputation issues should be treated in a separate docket specifically opened for that purpose.

IAC: The LECs should be required to impute the rates for tandem switched transport ("TST") until such time as they demonstrate that the actual routing of their toll traffic is otherwise.

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

SPRINT: No position.

TELEPORT: The Commission should adopt an effective imputation policy which would require LECs to impute to their end-to-end service the costs they impose on interconnectors to collocate in their bottleneck facilities.

TIME WARNER: Effective imputation guidelines would require that switched access charges, not actual costs, be covered by LEC toll rates. The Commission should address the subject of imputation in a broader context after this proceeding is concluded.

UNITED/CENTEL: United and Centel believe that access imputation would be better addressed outside of this proceeding. The Commission's imputation guidelines should, in any event, be modified to reflect the average transport cost, not rate, per access minute of use. Additionally, the requirement for a separate access line for the LEC's high volume toll offerings should be eliminated.

OPC: No position.

STAFF ANALYSIS:

Explanation of Issue

In DN 900708-TP, the Commission set up a list of guidelines for LECs to impute their switched access charges to their intraLATA toll rates. The purpose was to ensure that LECs' own toll rates were at least covering their wholesale charges assessed to their competitors. The current issue is how the imputation guidelines and/or calculations need to be changed, if Local Transport is restructured, to ensure that LEC toll rates will continue to cover their own access charges.

The guidelines are identified below as follows:

- 1) Toll revenues should cover aggregate access charges by service and for the business and residential market segments individually within a service.... Note that under this guideline, the test is aggregate access charges within each market.
- 2) Access charges should be calculated with originating access including a non-conversation time factor that accounts for holding time.

- 3) Originating access charges should reflect the time-of-day distribution of the service or market segment under consideration.
- 4) The BHMOC rate should be the average BHMOC per minute of use rate realized using the most recent annual data available.
- 5) Access costs may be calculated using the most economic network configuration associated with the targeted market segment.
- 6) The price floor for LEC toll services shall include the LEC's incremental cost of providing billing and collection service.

Summary of Parties' positions

ATT-C proposes that a surrogate per minute rate for local transport would have to be developed for each LEC based upon its approved transport rates and the actual utilization of its own network. (BR, p. 29) IAC agrees with this position and adds that until the LECs justify otherwise they should be required to impute Tandem Switching transport rates to their own toll rates. In addition, IAC witness Gillan believes that "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 loops." (Gillan TR 973)

Teleport witness Andreassi also suggests that LECs be required to impute to their "end-to-end service the costs they impose on interconnectors to collocate in their bottleneck facilities." (TR 725) This would include rates assessed to interconnectors under the expanded interconnection tariffs such as floor space, cross-connect and multiplexing service. (Teleport BR, p. 24)

The majority of the parties, however, (FCTA, GTEFL, SBT, ALLTEL, Time Warner, and United/Centel), believe that this issue should be addressed in a separate docket. FCTA and Time Warner, in their briefs, agree with Teleport witness Andreassi that LECs should impute to their end-to-end service the costs that they impose on interconnectors to collocate. However, they believe that the Commission should address the subject of imputation in a broader context after this proceeding is concluded. (FCTA BR, p. 16; Time Warner BR, p. 17)

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

tariffs approved and in attaining associated customer and ratepayer benefits." (TR 314) No party has stated or implied that the LECs are in any way given an advantage if they do or do not modify their imputation guidelines if Local Transport is restructured. IAC is the strongest advocate of requiring LECs to conform to any restructure adopted here, and it agrees that more data needs to be collected before changes can be made even if there were no opposition. (EXH 37)

In the meantime, staff believes that the current Local Transport rate element, not the RIC, would be the appropriate surrogate to use until the Commission addresses the broader policy issues. Parties have stated that they do not object to the use of the current Local Transport rate if the Commission elects not to modify imputation guidelines/calculations in this proceeding. Staff recommends that the Commission make no changes to imputation guidelines and/or calculation mechanisms now, and that a separate docket be opened to address its imputation policy.

The LECs uniformly oppose addressing the issue of imputation in this docket. They are opposed to the entire concept of access imputation, and believe that, at any rate, it is peripheral to the main issues in this case. In its brief, SBT stated: "The Commission does not need to decide the question of whether any modifications to its imputation guidelines are appropriate in order to determine whether collocation is in the public interest or whether local transport services ought to be restructured." (BR, p. 68) GTEFL adds that: "If the Commission determines that a new imputation policy is worth exploring, it would be best to do so in a separate docket just for that purpose. (BR, p. 48)

Distinct battle lines have been drawn in this case with respect to access imputation: The non-LEC parties who took a position, advocate making the imputation requirements stronger. For example, Teleport witness Andreassi and IAC witness Gillan believe that rates assessed AAVs for collocation should be added to the existing switched access charges for imputation by the LECs. Gillan also has stated that the most expensive form of Local Transport, Tandem Switched, should be imputed until the LECs have identified exactly how their networks are designed and have produced evidence showing that they should be allowed to use (the cheaper) DS1 or DS3 rates to impute access. (Andreassi TR 724-725; Gillan TR 599)

The LECs, on the other hand, question whether imputation should even be required at all. At minimum, they believe that the existing guidelines are outdated and that the policy needs to be completely readdressed, something which IAC witness Gillan would expressly like to avoid. (EXH 37) For example, United/Centel witness Poag stated at hearing:

... the guidelines were issued in April of '92 and we're into August of '94. And the existing guidelines are, quite frankly, seriously outdated. And it seems to me that the pace of change, the time-of-day discounts, the BHMOC issues, there are some other issues with the way that the original guidelines were implemented that don't really give full credit to the local exchange company in terms of what customers are paying for trunks, the cross elasticity of trunks with special access services, that really never got incorporated into those guidelines and need to be. (TR 817)

SBT witness Hendrix was more pointed:

... it is not appropriate to address access imputation in this proceeding. Furthermore, imputation requirements are no longer needed and should be eliminated since it is contrary to the intent of competition.... These requirements artificially raise toll rates for LECs such that it masks the true low cost toll service provider.... If the decision is to maintain such ... requirements, the ... guidelines should be modified to reflect the average transport cost, not rate, per access minute of use.... The requirement for a separate access line for ... LECs' high volume toll offerings should be eliminated.... IXCs and other toll providers should be required to follow the same imputation guidelines for their intrastate toll services. (TR 422-423)

GTEFL proposed that the RIC be used as a surrogate in the imputation calculations until the Commission "can comprehensively readdress imputation in a more appropriate forum. (Lee TR 314)

Intermedia, Sprint, and OPC took no position.

Staff Recommendation

Under the existing policy as set forth in DN 900708, the Commission would automatically require that access charges continue to be imputed to ensure that LEC toll rates recover their own access charges. If the Commission approves expanded interconnection, however, a question arises as to whether the current imputation requirements should continue. As discussed above, the LECs have stated that this issue is too controversial and tangential to the main issues to be handled in this case. They have proposed that all the access charge imputation policies and guidelines be handled separately.

Staff agrees that any modifications to the existing imputation policy should be treated in another docket. Imputation deals with LEC toll rates while this case addresses switched access. We agree with GTEFL witness Lee that "... due to the contentious nature of the issues inherent with imputation, it will only result in unnecessary delays in getting these LTR

DOCKET NO. 921074-TF
NOVEMBER 18, 1994

ISSUE 24: Should these dockets be closed?

RECOMMENDATION: No.

POSITION OF PARTIES

INTERMEDIA: No. These dockets should not be closed until all related issues have been resolved in the federal proceeding.

ALLTEL: No position.

ATT-C: Given appropriate action by the Commission, the dockets regarding LTR restructure can be closed, but the expanded interconnection docket should remain open to address continuing issues such as interconnection with switching equipment.

FCTA: Depending on the decisions reached in this proceeding, additional Commission review may be necessary.

GTEFL: Yes, upon adoption of GTEFL's positions on all the Issues presented.

IAC: The Commission should schedule workshops to consider how the LECs should impute access charges into their toll rates under the new LTR structure and how LTR should be integrated into MABC.

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

SPRINT: Yes.

TELEPORT: Once expanded interconnection for special and switched access services is fully implemented through reasonable, economically viable tariffs, the Commission can permit these dockets to become inactive. It should not close them, however, but leave them open for parties to raise interconnection problems

TIME WARNER: Depending on the decisions reached in this proceeding, additional Commission review may be necessary.

UNITED/CENTEL: No position.

ORC: No position.

DOCKET NO. 921074-TP
NOVEMBER 18, 1994

STAFF ANALYSIS: These dockets should remain open pending resolution of Phase 1 related matters, and also pending receipt of the following:

- 1) Expanded interconnection tariffs requested in Issue 17.
- 2) Zone Density Pricing Plans requested in Issue 18.
- 3) Local Transport Tariffs requested in Issue 21 and the MABC tariffs in Issue 22.