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May 29, 1992

ORIGINAL
FILE COPY

Mr. Steve Tribble
Director of Records and
Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399

Re: Docket No. ^{TA} 920250-~~TL~~ - Application of Hyperion
Telecommunications of Florida, Inc. for Authority to
Operate as an Alternative Access Vendor Within the State
of Florida

Dear Mr. Tribble:

Enclosed for filing are the original and fifteen (15) copies
of Comments of Intermedia Communications of Florida, Inc. in the
above-referenced docket. Also enclosed is a diskette containing
the text of the Petition in Word Perfect 5.1.

Thank you for your assistance in this matter.

Sincerely,

Patrick K. Wiggins
Patrick K. Wiggins

PKW:prl
Enclosures

- ACK
- AFA _____
- APP _____
- CAF _____
- CMU
- CTR _____
- EAG _____
- LEG 1 _____
- LIN 6 _____
- OPC _____
- RCH _____
- SEC 1 _____
- WAS _____
- OTH Chris Don

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FPSC-RECORDS/REPORTING

whose subsidiary holds a franchise to provide cable television ("CATV") service in the City of Jacksonville.

Intermedia holds a certificate issued by this Commission authorizing it to provide intrastate AAV services throughout the State of Florida. See Order No. 25540, Docket No. 910396-TP (issued Dec. 26, 1991) ("Certificate Order"). Intermedia's certificate became effective January 1, 1992. At this time, Intermedia provides such services in the following cities: Tampa, Orlando, Miami, and Jacksonville. Thus, because a CFT/HTF joint venture will compete directly with Intermedia in the provision of alternative access vendor services in Florida, and, in particular, in Jacksonville, Intermedia is an interested party with respect to the HTF application.

Intermedia's purpose in filing these comments is not to oppose HTF's application for an AAV license. Rather, Intermedia's purpose is to alert the Commission to two potential problems raised by HTF's affiliation with a cable television company and to suggest a solution for each. If the problems are adequately addressed by the Commission, then granting HTF an AAV certificate will be in the public interest because it will promote effective and fair competition in AAV services.

II. Applicability of the Order No. 24877 AAV Service Restrictions.

Intermedia's AAV authorization specifically requires it to comply with the terms of the generic AAV Order No. 24877, Docket No. 890183-TL (issued Aug. 2, 1991), reconsideration denied, Order

No. 25546 (issued Dec. 26, 1991), and any implementing regulations adopted by this Commission. In particular, pursuant to the express terms of its certificate, Intermedia is prohibited from providing any intraexchange or interexchange private line services, whether voice, data, or video services, between unaffiliated entities. Intermedia is also prohibited from providing any special access service that is part of an end-to-end dedicated service to unaffiliated entities, except that it "may provide special access to an interexchange carrier's switched network." See Certificate Order at 2.

While Intermedia does not oppose a grant of the HTF application, Intermedia is concerned that, HTF may be confused about the scope of the restrictions in Order No. 24877, which Intermedia believes would be applicable to an AAV operating its alternative access service in whole or in part in conjunction with or via the Jacksonville cable television system operated by CFT's affiliate. Intermedia understands that representatives of HTF have indicated that, due to CFT's relationship with the cable operator in Jacksonville, in contrast to Intermedia, the HTF/CFT AAV will be able to offer video conferencing and other private line services between unaffiliated entities.^{2/}

As suggested above, however, it is Intermedia's understanding that such an offering would violate the provisions of Order No. 24877, and thus would be unlawful. As shown below, either the cable operator would be offering AAV services without a

^{2/}The issues raised by the relationship of CFT and its CATV affiliate would also be applicable to any service provided by HTF in connection with or via an HTF CATV affiliate.

certificate, or, in the event it received a separate certificate, could only be offering such service in violation of the mandatory terms of a certificate.

III. Any Grant of the HTF Application Must Be Conditioned on Compliance With the Requirements of Order No. 24877.

In the grant of any new AAV certificate, the Commission should be explicit about the ground rules under which the AAV will operate. In this context, this means that any grant of the HTF application should be conditioned on compliance with the requirements of Order No. 24877, as well as any other requirements the Commission deems appropriate to promote the public interest.

The Commission has ample jurisdiction to impose such conditions on an entity seeking certification. Section 364.01, Florida Statutes, confers on this Commission jurisdiction over all telecommunications companies, including jurisdiction over any two-way telecommunications services offered by HTF/CFT's Jacksonville CATV affiliate.^{3/} Section 364.02(7) excludes from the definition of a "telecommunications company" only "a cable television company providing cable service as defined in 47 U.S.C. 522," but, consistent with the limited scope of the federal preemption of regulation of cable television service, does not restrict this Commission's jurisdiction over cable operators' non-cable services. Section 522 of the Communications Act of 1934 as amended, 47 U.S.C. § 522, limits the definition of "cable service" to:

^{3/}The only exceptions are two-way services incidental to the provision of traditional cable television services, such as remote ordering of pay-per-view programs or polling of subscribers in connection with video programming.

(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.^{4/}

Moreover, the 1984 Cable Act, of which Section 522 is a part, also makes clear that in enacting federal legislation regulating cable television services, Congress did not intend to restrict the authority of state regulatory authorities such as this Commission to regulate any non-cable service offerings of cable television system operators, including alternative access vendor services.^{5/}

Thus, any telecommunications services offered by an HTF/CFT venture in association with CFT's CATV affiliate, regardless of whether they utilize facilities also utilized to provide cable service, are subject to the certification and other regulatory requirements of this Commission. See F.S.A. § 364.337(3)(b). Any alternative access vendor services provided by either an HTF/CFT venture or a CFT CATV affiliate are thus also subject to the general restrictions on the provision of service to unaffiliated entities of Order No. 24877, which this Commission has found to be required by the terms of Sections 364.335 and 364.337. See Order No. 25546 at 2. Therefore, in order for an HTF/CFT venture to offer AAV services in conjunction with a CFT CATV affiliate, that affiliate must also receive a certificate, and, like all other

^{4/}Florida statutes concerning cable television, including that governing municipal franchising, echo the definition of the federal statute. See F.S.A. § 166.046(1)(a); F.S.A. § 337.4061(1)(a).

^{5/}See the Cable Act, which expressly provides that the Act was not to be deemed to affect state jurisdiction over non-cable services provided through a cable system. Pub. L. 98-549, 98 Stat. 2780, 2801, reprinted at 47 U.S.C. § 541(d)(2).

alternative access vendor certificates, that certificate must incorporate the unaffiliated entity restrictions.

IV. Any AAV Certificate Granted To HTF Must Incorporate Prophylactic Provisions That Will Inhibit Anti-Competitive Behavior Such As Cross-Subsidization.

Intermedia is also concerned that there is substantial opportunity for cross-subsidization of the alternative access vendor business services offered by an HTF/CFT venture in conjunction with CFT's CATV affiliate by revenues and services of that CATV system which provides cable service to residential subscribers. Significantly, because the City of Jacksonville is served by more than six television broadcast stations, the CATV operator, despite its substantial market power in the distribution of video programming in Jacksonville, amounting to a de facto monopoly for most consumers, is exempt under federal law and the regulations of the Federal Communications Commission from rate regulation by the City of Jacksonville.

While rates for the Jacksonville cable television service are not subject to this Commission's jurisdiction, this Commission does have authority to incorporate in any alternative access vendor certificate awarded to HTF or to the CFT CATV affiliate a requirement that there be no cross-subsidization of the alternative access vendor services by cable television services. It may also adopt other measures designed to enforce that requirement. In particular, Section 364.01(d) obligates the Commission to prevent anticompetitive behavior. See also F.S.A. §§ 364.01(e), 364.338(3) (evinced the legislative concern about anticompetitive behavior). Moreover, in enacting Section 364.3381, prohibiting local exchange

carriers from cross-subsidizing competitive services with monopoly services, the legislature of this State demonstrated its particular concern that a telecommunications company's captive customers not bear heavier rates in order to enable the company to price its competitive services below-cost.

There is little prospect of cross-subsidization by monopoly services of AAV services offered by an independent alternative access vendor such as Intermedia, which offers no de jure or de facto monopoly services. With respect to an AAV affiliated with a cable television operator, however, there is the same prospect of harm to consumers as in the case of a local exchange carrier offering both monopoly and competitive services. The cable company can use high revenues from residential consumer services to subsidize its AAV business services unless such services are required to bear the fully distributed costs of their operation.

If a cable company were to cross-subsidize its competitive AAV services with revenues from its residential consumer services, other AAVs and the local exchange companies would be harmed by the unfair competition. Simply put, an AAV such as Intermedia cannot cross-subsidize (again, Intermedia has no captive customers from which to extract the subsidies) and the LECs are prohibited from cross-subsidizing. Cable companies should compete under the same restriction. Unless safeguards are imposed ensuring that neither the cable company nor the LEC may cross-subsidize, the resulting competition in AAV type services will not be in the public interest, but rather mutually destructive.

Intermedia suggests that the Commission impose a simple condition on cable companies that no AAV service may be offered or

provided below its long range incremental costs. This is the standard traditionally imposed on the LECs for such services, whether they be offered under tariff or contract service arrangements. The mechanism for enforcing this condition need not be specified at this time, and could be reserved for the Commission's proceeding to adopt AAV rules. From Intermedia's perspective, the key at this juncture is to ensure that the above condition be explicitly imposed in any grant of an AAV certificate to a cable company or affiliate.

Section 364.337(1)(a) authorizes the Commission to make appropriate distinctions among telecommunications companies in awarding certificates, and Section 364.337(2)(e) authorizes the Commission to consider various public interest factors in imposing specific conditions in telecommunications certificates. Thus, the Commission is fully empowered through the certification process to preclude the relationship between HTF, CFT and Continental Cablevision from leading to cross-subsidization and other anti-competitive behavior.^{6/}

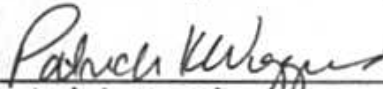
Conclusion

If the Commission grants the application of HTF to provide alternative access vendor services, it should ensure that any certificate it awards expressly requires full compliance with the terms of Order No. 24877 regardless of whether any service is provided in conjunction with a cable television system. Moreover,

^{6/}See also *Microtel, Inc. v. Florida Public Service Commission*, 464 So.2d 1189 (Fl. 1985) (interpreting F.S.A. § 364.335(1) and noting that the statute authorizing the Commission to impose special requirements in certificates of competitive service providers is intended to protect consumers).

the Commission should adopt such measures as may be appropriate to protect the public interest and ensure that the alternative access vendor services offered by HTF are not cross-subsidized by the cable television services offered by the CFT's CATV operator in Jacksonville or by any CATV operator affiliated with HTF.

Respectfully submitted,



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Attorneys for Intermedia
Communications of
Florida, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 1992, a copy of the foregoing "Comments of Intermedia Communications of Florida, Inc." was delivered by mail, postage prepaid, as indicated, to the parties on the listed below:

Office of the General Counsel
Florida Public Service Commission
Fletcher Building
101 E. Gaines Street
Tallahassee, FL 32399

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Tallahassee, Florida 32301
Counsel for
Hyperion Telecommunications of Florida, Inc.

Patricia K. Wagner

* Also by fax
PKW

ATTACHMENT A

6-COMMUNICATIONS DAILY

FRIDAY, APRIL 24, 1992

Salman Al-Roumi, Ministry of Communications, Kuwait, deputy chmn... Sandy Tepelidis promoted by MCA TV to dir.-operations and promotion, Creative Services Dept.

TELCO/CABLE

Continental Cablevision formed alternative access joint venture with Hyperion Communications to serve Jacksonville area, companies said. Venture will use Continental's fiber infrastructure, as well as laying new fiber, to provide local access telephone voice and data connections between commercial customers and long distance carriers. A substantial portion of the network already exists and is being used to transport video. Continental Senior Vp Jeffrey DeLorme said. Customers also will be able to lease point-to-point communication circuits and use network to interconnect LANs. Network, which will use Synchronous Optical Network Transport System, is to be operational in June. Hyperion is new Fla.-based firm headed by former Penn Access officials Charles Drenning, Randolph Fowler, Paul Fajerski.

Bell Canada Enterprises (BCE) has bought out Pacific Telesis stake in 6 U.K. cable franchises, as expected (CD March 26 p6). In addition to PacTel's 44.5% of East London Telecommunications (ELT), BCE bought enough of Jones Intercable Holdings to give it majority of ELT. However, Jones will remain managing partner of ELT, which has franchise to pass about 630,000 homes in London area. Financial details weren't disclosed. BCE also owns 30% of Videotron Corp., which has U.K. cable franchises for 1.1 million homes in London and Southampton areas. PacTel had said earlier that it was interested in selling ELT because its buyout of Masada systems had allowed it to reach goal of one million U.K. cable homes and it wanted effective control of cable systems in which it had stake.

MASS MEDIA

CBS Chmn. Laurence Tisch was paid total of \$1,505,422 in 1991 -- \$927,885 salary, \$455,000 bonus and \$122,537 in payments for supplemental life insurance, according to proxy statement issued in advance of May 13 shareholders meeting. CBS Bcast. Group Pres. Howard Stringer made \$936,486 -- \$640,577 salary and \$280,000 bonus. Statement also details 3-year contract running through July 31, 1994, that Stringer signed last year. He will be paid in succeeding years aggregate salary and bonus of \$950,000, \$1 million and \$1.05 million, with possibility of additional bonus each year. Peter Lund, CBS Bcast. Group exec. vp-Mktg. Div. pres., made \$902,701 in 1991, including \$250,000 payment to compensate him for the loss of a bonus from his previous employer (Multimedia). Lund is guaranteed \$650,000 in aggregate salary and bonus for current contract year and \$700,000 in each of following 2 years. Entertainment Div. Pres. Jeffrey Sagansky was paid \$751,134 last year, and is guaranteed minimum of \$750,000 in salary and bonus annually for 4-1/2 year contract not yet finalized. News Div. Pres. Eric Ober made total of \$625,004 last year. He is getting \$425,000 salary for current year ending Aug. 31, \$475,000 in each of following 2 years. His minimum bonus is \$191,250 for calendar 1992, \$215,750 for each of following 2 years.

FCC hosted day-long conference in Washington Thurs. of its advisory committee on Emergency Bcast. System (EBS), with Chmn. Sikes and Emergency Commissioner Barrett addressing group. Sikes, who shifted EBS from jurisdiction of Mass Media Bureau to Field Operations Bureau (FOB) when he became chmn. 3 years ago, said Commission and outside advisers are in position to go beyond fine-tuning and to "dramatically improve" EBS. He said his own broadcast experience underscores importance of taking new look and "invigorating" system. Currently pending at FCC are both inquiry and rulemaking into improving EBS. Barrett said "flexibility and redundancy" will become increasingly important in EBS in months and years ahead. He praised broad range of industries represented on committee and said that "as new technologies unfold," it's important for FCC to have views from representatives of broadcast, cable and telephone industries. Committee, which last met in 1987, will make recommendations to Commission for EBS improvements. FOB Chief Richard Smith said his Bureau is well positioned to handle emergency broadcasting with 35 field offices from P.R. to Hawaii. He said there still are many gaps in system, such as (1) fact that emergency signals aren't carried by cable and (2) periods when home sets are using VCRs or are tuned to cable. FCC has been hosting regional EBS workshops, last in conjunction with NAB convention, next in Dallas next month tied in with NCTA convention. Smith said stations' participation should remain voluntary, not required by govt.

Radio Chattanooga, licensee of WGOW(AM)/WSKZ(FM) Chattanooga, has been fined \$11,000 for violations of FCC's equal employment (EEO) rules. At same time, stations' licenses were renewed subject to EEO reporting requirements.

Ad-supported Channel One high school newscast service was only marginally helpful in improving students' knowledge of current affairs, according to study commissioned by parent Whittle Communications. Study by Je-