

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Intermedia  
Communications of Florida, Inc.  
for expanded interconnection for  
AAVs within LEC central offices

) DOCKET NO. 921074-TP  
)  
) Filed: July 8, 1993  
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)

REBUTTAL TESTIMONY OF JONATHAN E. CANIS  
ON BEHALF OF INTERMEDIA COMMUNICATIONS OF FLORIDA, INC.

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**REBUTTAL TESTIMONY OF JONATHAN E. CANIS**

- 1
- 2 **Q. PLEASE STATE YOUR NAME AND POSITION.**
- 3 **A. Jonathan E. Canis, attorney with Swidler & Berlin, Chartered, Washington,**  
4 **D.C. I am submitting this testimony on behalf of Intermedia Communications**  
5 **of Florida, Inc. ("ICI").**
- 6 **Q. DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING?**
- 7 **A. Yes.**
- 8 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**
- 9 **A. This testimony is offered to rebut statements made in the direct testimony of F.**  
10 **Ben Poag (for United Telephone Company of Florida), David B. Denton (for**  
11 **Southern Bell Telephone and Telegraph Company), and Edward C. Beauvais,**  
12 **Ph.D. (for GTE Florida Incorporated).**
- 13 **Q. SHOULD THE COMMISSION ADDRESS ANY SWITCHED ACCESS ISSUES IN**  
14 **PHASE I OF THIS PROCEEDING?**
- 15 **A. Yes, although not to the extent suggested by Messrs. Poag and Denton and**  
16 **Dr. Beauvais. Those witnesses all dedicated substantial portions of their**  
17 **testimony to discussing the revenue effects of switched services**  
18 **interconnection and competition on their respective companies, the need for**  
19 **restructure of local exchange carrier ("LEC") switched transport rates, and the**  
20 **need for changes in separations rules. These issues have all been identified**  
21 **by the Commission as the subject for Phase II of this proceeding, and are**  
22 **properly addressed therein. I am compelled to offer one observation**

1 concerning the Phase II proceeding, however: any restructuring of LEC  
2 switched transport rates must take place only in conjunction with the adoption  
3 of Commission policies specifically designed to promote direct competition for  
4 switched services -- including the expansion of mandatory central office  
5 collocation to allow cross-connection to switched services. As the LEC  
6 witnesses all testified, switched transport rate restructuring will enable LECs to  
7 better respond to competition for switched services. (Poag Testimony at 5-9,  
8 Denton Testimony at 3, Beauvals Testimony at 22) Such relief is inappropriate  
9 unless the existing regulatory barriers to full competition for switched services  
10 are eliminated, and competitive carriers have the ability to provide switched  
11 services over collocated facilities.

12 One switched service issue is relevant to Phase I of this proceeding,  
13 however. The Commission should expressly permit parties with special  
14 access collocation arrangements to provide transport for switched services,  
15 including Centrex, over their collocated facilities. The combination of special  
16 access services and switched transport over the same facilities -- a process  
17 called "ratcheting" -- is widely used by LECs. The process enables a carrier to  
18 load as much traffic as possible onto its transmission facilities, thereby  
19 maximizing the efficiency of its network. Failure to permit ratcheting on a  
20 competitive carrier's collocated facilities would deny the carrier these critical  
21 efficiencies and render it incapable of competing with LECs on an even  
22 footing.

1 Q. DO YOU AGREE WITH LEC WITNESSES THAT THE FCC'S POLICY IN  
2 FAVOR OF MANDATORY PHYSICAL COLLOCATION REMAINS AN "OPEN  
3 ISSUE."

4 A. No. The LEC witnesses all state that the Federal Communications  
5 Commission's ("FCC") policy in favor of mandatory physical collocation has  
6 been appealed by the LECs. They further state that they have been informed  
7 by their attorneys that the FCC's policy is an unconstitutional taking of the  
8 LECs' property, and that the policy is therefore likely to be reversed on  
9 appeal. (See Poag Testimony at 20, Denton Testimony at 6, Beauvais  
10 testimony at 11, 25). These assertions are incorrect on both procedural and  
11 substantive grounds.

12 After the FCC released the order adopting its physical collocation  
13 policy, a group of LECs asked the FCC to stay its order, in part on the  
14 grounds that the policy constituted an unconstitutional taking. The FCC  
15 rejected this argument and denied the stay requests. Expanded  
16 Interconnection with Local Telephone Company Facilities, 8 FCC Rcd 123  
17 (1993). Subsequently, several LECs asked the Court of Appeals for the  
18 District of Columbia Circuit to stay the FCC's order, again arguing that  
19 physical collocation was an unconstitutional taking. The court rejected these  
20 petitions, finding that the LECs failed to show that they would suffer irreparable  
21 harm as a result of the FCC's physical collocation policy. Bell Atlantic v. FCC,

1           **No. 92-1619 (D.C. Cir., Jan. 19, 1993). The FCC's Order establishing its**  
2           **policy in favor of mandatory physical collocation is final and fully in effect -- the**  
3           **policy is not an "open issue."**

4           **Moreover, in my opinion as a regulatory attorney, the LEC argument**  
5           **that physical collocation constitutes an unlawful taking of the LEC's property,**  
6           **in contravention of the Fifth Amendment of the Constitution, is wholly without**  
7           **merit and does not form a viable grounds for appeal. First, the FCC's power**  
8           **to order LECs to provide service is beyond dispute. Yet, if the LECs'**  
9           **argument is valid, any action by the FCC that would require a LEC to dedicate**  
10           **facilities to provide a service involuntarily -- including dark fiber service, pole or**  
11           **conduit access, meet-point interconnection, or virtually any other service --**  
12           **would constitute a "taking." Such a tortured interpretation of the Constitution**  
13           **would undermine the authority of any regulatory body.**

14           **In addition, even if it is assumed for the sake of argument, that physical**  
15           **collocation does constitute a taking of LEC property, the Fifth Amendment**  
16           **only proscribes taking "without just compensation." It is abundantly clear that**  
17           **LECs are fully compensated for the floorspace and facilities that they dedicate**  
18           **to a collocated party's use. For these reasons, the LECs' "taking" arguments**  
19           **lack merit and, in my opinion, cannot support reversal of the FCC's order on**  
20           **appeal.**

21   **Q.    UNDER WHAT CONDITIONS SHOULD LECS BE ALLOWED TO PROVIDE A**  
22   **FORM OF COLLOCATION OTHER THAN PHYSICAL? .**

1 A. LEC witnesses argue that the Commission should adopt a standard that would  
2 not mandate either physical or virtual collocation, but would allow LECs to  
3 "negotiate" appropriate collocation arrangements with interested parties.  
4 (Poag Testimony at 20, Beauvais Testimony at 19-20, 37-38, Denton  
5 Testimony at 4) Because LECs own and control the central office, collocators  
6 have no leverage in negotiating with the LECs -- absent a Commission  
7 mandate, such a "negotiation" standard would allow LECs unilaterally to  
8 impose terms and conditions on the collocator. In addition, as Dr. Beauvais  
9 admits (Testimony at 9, 36), the FCC's policy in favor of mandatory physical  
10 collocation sets the standard for interstate collocation, and it would be  
11 inefficient for the Commission to establish an inconsistent standard for  
12 collocation for intrastate services. There are, however, two instances in which  
13 exemptions from the physical collocation requirement are reasonable.

14 The FCC's order exempts LECs from providing physical collocation in  
15 two instances: (1) if the central office lacks adequate space to accommodate  
16 physical collocation, and (2) if the LEC and the interconnecting party  
17 voluntarily negotiate a virtual collocation arrangement. I recommend that the  
18 Commission adopt these two exceptions from a mandatory physical  
19 collocation policy, subject to the conditions discussed below.

20 Regarding space availability issues, the Commission should establish an  
21 objective, verifiable evidentiary standard that will ensure that LECs are not  
22 unreasonably denying physical collocation to any party. LECs claiming that a

1 given central office lacks space to accommodate physical collocation should  
2 be required to explain in detail total central office space, the amount of space  
3 not currently used for provision of service and the amount of space reserved  
4 for services that may be provided over the next three years. Such information  
5 should be attested by a sworn affidavit of a LEC representative. In addition, if  
6 a LEC's claim for exemption for any given central office is contested by a party  
7 seeking physical collocation, the Commission should permit verification of the  
8 LEC claim that inadequate space exists. Such verification could be made by  
9 allowing inspection of the central office by the collocator's representative, or  
10 by a neutral third party (such as an independent contractor approved by the  
11 LEC and hired by the collocator). These safeguards will ensure that LECs do  
12 not unreasonably deny physical collocation, and will avoid unnecessary  
13 litigation before the Commission.

14 An exemption from physical collocation for a given central office should  
15 also be available in cases where a virtual collocation arrangement is voluntarily  
16 negotiated by the LEC and collocator. As noted above, however, absent a  
17 Commission mandate, collocators have no power to negotiate reasonable  
18 collocation terms and conditions with LECs. A policy mandating physical  
19 collocation as a default is essential to ensure that LECs have incentive to  
20 negotiate a collocation arrangement that is truly equivalent to physical  
21 collocation.

1 Q. DO YOU AGREE WITH MR. BEAUVAIS' STATEMENT THAT PHYSICAL  
2 COLLOCATION OFFERS NO INCREMENTAL BENEFIT OVER VIRTUAL, AND  
3 WILL IN FACT PROVE DETRIMENTAL TO THE PUBLIC INTEREST?

4 A. No. Dr. Beauvais argues that physical collocation will impose a number of  
5 "unquantifiable" costs on LECs by burdening their operations, interfering in  
6 their business plans, and raising serious concerns over security and fairness  
7 to collocating parties. (Beauvais Testimony at 14-19). In making these  
8 arguments, Dr. Beauvais resurrects a number of arguments that have been  
9 raised by LECs before the FCC, and which the FCC rejected. Indeed, we  
10 were able to anticipate these arguments, and addressed them in my direct  
11 testimony. (Canis Testimony at 28-34) While it is unnecessary to repeat these  
12 arguments here, I will reiterate that physical collocation has been provided in  
13 New York for over a year, and in Massachusetts and Illinois for lesser amounts  
14 of time, and none of the consequences predicted by Dr. Beauvais has  
15 occurred.

16 Moreover, as discussed in my direct testimony, virtual collocation  
17 imposes unnecessary costs on collocators, reduces a collocator's operating  
18 standards, and eliminates significant efficiencies. (Canis Testimony at 15-28).  
19 These costs are not hypothetical -- they are illustrated by the experience of  
20 competitive access providers that have taken virtual collocation from Illinois  
21 Bell through its state collocation tariff, which has also been in effect for over a  
22 year. The experience gained with collocation to date clearly shows that



1 physical collocation serves the public interest by promoting competition more  
2 effectively than virtual collocation.

3 Q. WHAT ELEMENTS OF EXPANDED INTERCONNECTION SHOULD BE  
4 TARIFFED?

5 A. All rates and charges associated with physical and virtual collocation should  
6 be tariffed. This includes recurring and nonrecurring charges for the following  
7 elements:

- 8 \* Central office space rental
- 9 \* Cross-connects
- 10 \* Power and other utilities
- 11 \* Cage construction
- 12 \* Cable and conduit
- 13 \* Splicing
- 14 \* Testing
- 15 \* Training
- 16 \* Order processing
- 17 \* Engineering and design
- 18 \* Central office space preparation

19 All rates should be supported with detailed cost data that is fully  
20 consistent with the cost data required by the FCC. Moreover, the Commission  
21 should require that LECs adopt uniform rate structures and costing  
22 methodologies. In addition, LECs should be prohibited from imposing any

1 contribution element in the charges for special access collocation. If they  
2 attempt to include such charges, however, the charges should be stated  
3 separately and fully supported with cost data illustrating how the amounts  
4 were derived and what services are being subsidized.

5 Experience with the implementation of the FCC's collocation policies  
6 indicates that mandating specific, uniform rate structures and cost support  
7 materials is both necessary and efficient. The LECs filed their collocation  
8 tariffs on February 16, 1993. The rates proposed in those tariffs were  
9 uniformly attacked as grossly excessive by competitive access providers,  
10 interexchange carriers and large users. The FCC subsequently suspended all  
11 of the LEC collocation tariffs and subjected them to a full investigation, which  
12 is currently in progress. Ameritech Operating Companies, DA 93-657, CC  
13 Docket No. 93-162, released June 9, 1993. Enormous resources are being  
14 devoted by the FCC and the industry to the analysis of the LEC collocation  
15 rates and charges, and the FCC has stated its intention to require LECs to  
16 provide additional cost data to support their proposed fees. Id. The analysis  
17 of the LEC charges is made more difficult because all of the LECs have  
18 established different rate elements, and use different costing methodologies.  
19 The lack of uniformity in the LEC filings has made it very difficult to determine  
20 if LECs are double-recovering costs in various rate elements, using  
21 appropriate loading factors, and identifying direct costs accurately. In light of  
22 this experience, it is clear that the Commission's review of LEC rates will be

1 facilitated by requiring uniformity among LEC rate structures and costing  
2 methodologies, and by requiring a level of cost support detail at least as  
3 stringent as that required by the FCC.

4 In addition, the extraordinary controversy over the reasonableness of  
5 the LECs' proposed rates for central office space rental and utility charges in  
6 their interstate tariffs compels rejection of the recommendation of the LEC  
7 witnesses that LECs provide these services on an off-tariff bases. (Denton  
8 Testimony at 12, Beauvais Testimony at 38).

9 Q. DO YOU AGREE WITH THE RECOMMENDATION THAT ALL PARTIES  
10 PROVIDING COLLOCATION SHOULD BE SUBJECT TO THE SAME  
11 TARIFFING REQUIREMENTS?

12 A. No. Mr. Denton (Testimony at 13) and Dr. Beauvais (Testimony at 34) argue  
13 that all carriers -- LECs, IXCs and CAPs alike -- be subject to the same tariffing  
14 treatment. Subjecting LECs and competitive carriers to the same tariffing  
15 requirements is neither necessary nor desirable. Tariffing requirements, like all  
16 forms of regulation, are necessary to ensure reasonable behavior in markets  
17 that are not subject to the discipline of the competition. As I stated in my  
18 direct testimony, (Canis Testimony at 37) unlike LECs, CAPs lack market  
19 power and do not have access to a captive base of monopoly ratepayers.  
20 Unlike LECs, CAPs cannot establish excessive rates (if they do, customers will  
21 simply buy from LECs), and cannot subsidize their rates for competitive  
22 services with monopoly revenues. Absent the threat of excessive rates, or

1 unlawful cross-subsidization, there simply is no need to impose the regulatory  
2 burden of tariffing upon CAPs.

3 Q. WHAT STANDARDS SHOULD GOVERN VIRTUAL COLLOCATION?

4 A. As discussed above, contrary to the assertions of the LEC witnesses, absent  
5 Commission action, "negotiation" will not result in reasonable virtual collocation  
6 arrangements. To the extent that virtual collocation may be necessary in  
7 those rare instances where physical collocation is not possible, the  
8 Commission should establish standards to ensure that the virtual  
9 arrangements are reasonably equivalent to physical collocation. These  
10 safeguards include the following:

- 11 \* Report provisioning and maintenance intervals for both LEC and  
12 collocator equipment to ensure against discrimination
- 13 \* Justify any overtime charges to prevent collocators from bearing  
14 unwarranted costs
- 15 \* Allow collocators to provide all collocated equipment at their cost  
16 and disallow any LEC markups
- 17 \* Allow collocators to retain title to the collocated equipment and to  
18 have it removed from the collocation arrangement upon request  
19 and payment of removal costs
- 20 \* Require LECs to tariff and support all rate elements; to prevent  
21 discrimination, do not allow individual case basis charges

- 1                   \*       Establish strict guidelines to prevent imposition of unreasonable  
2                                   training costs (e.g., prohibit LECs from requiring collocators to  
3                                   pay for LEC personnel training in SONET or ATM technology,  
4                                   which ultimately will benefit LECs)
- 5                   \*       Provide for expedited consideration of any collocator complaints  
6                                   arising out of virtual collocation arrangements

7                   Of course, collocators and LECs should remain free to negotiate  
8                   different arrangements, provided that all relevant rates and other information  
9                   are publicly disclosed in LEC tariffs, and offered on a nondiscriminatory basis  
10                  to other collocators.

11 Q.   HOW DO YOU RESPOND TO RECOMMENDATIONS THAT THE  
12        COMMISSION ADOPT A FORM OF "ZONE DENSITY" PRICING FLEXIBILITY  
13        FOR LECs?

14 A.   The LEC witnesses all support the adoption of some form of geographic rate  
15        deaveraging pricing flexibility for LECs, loosely modeled after the FCC's "Zone  
16        Density" pricing plans. (Poag Testimony at 19, Denton Testimony at 12,  
17        Beauvais Testimony at 33) LECs currently enjoy enormous pricing flexibility  
18        for their intrastate rates, and additional pricing flexibility is not merited.

19               First, the LEC claims of revenue losses to "bypass" are grossly  
20        overstated. None of the LEC witnesses specifically discusses the methods  
21        used to analyze the effects of bypass. However, I am familiar with the  
22        methods used by LECs to estimate the effects of bypass in reports to the

1 FCC. In those reports, LECs routinely used highly questionable methods,  
2 such as reporting "opportunity losses" -- comparing actual sales for a given  
3 year against sales that were projected for that period during the previous year,  
4 and attributing any shortfall to competition. In fact, the reports were so fanciful  
5 and methodologically flawed that a Federal/State Joint Board has  
6 recommended that the FCC discontinue them. Amendment of Part 36 of the  
7 Commission's Rules and Establishment of a Joint Board, 7 FCC Rcd 4285,  
8 4287 (1992).

9 In addition, the LECs already have more than adequate pricing  
10 flexibility. Since ICI entered the Florida access market, LECs have  
11 substantially reduced their special access rates. Moreover, LECs employ  
12 extensive volume and term discounted rate structures that provide substantial  
13 additional discounts to the largest service users. Finally, LECs enjoy the ability  
14 to establish customer-specific contracts for special access services, providing  
15 them with the ultimate form of pricing flexibility. The combined effect of these  
16 ratemaking practices provide LECs with enormous pricing flexibility, and belies  
17 the LEC arguments that they require zone pricing in order to compete.

18 Q. DO YOU AGREE WITH THE STATEMENT OF MR. DENTON (TESTIMONY AT  
19 7) THAT VIRTUAL COLLOCATION IS NECESSARY IF COLLOCATION IS TO  
20 BE EXPANDED TO NON-TIER 1 LECs?

21 A. No. As stated in my direct testimony, extending collocation requirements to  
22 non-Tier 1 LECs could help to expand competition to less densely populated

1 areas and provide service alternatives to smaller users. If such  
2 interconnection obligations are imposed on a case-by-case basis, in response  
3 to bona fide requests for collocation, no undue burdens will be imposed on  
4 smaller LECs. (See Canis Testimony at 35)

5 Q. DO YOU AGREE WITH MR. DENTON'S RECOMMENDATION THAT  
6 COLLOCATION BE RESTRICTED TO DS1 AND DS3 SERVICES (TESTIMONY  
7 AT 9)?

8 A. No. Mr. Denton provides no technical or policy grounds for so restricting  
9 collocation. In order to maximize the public benefits of competition and  
10 customer choice, such artificial restrictions on a collocated party's ability to  
11 provide service must be avoided.

12 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

13 A. Yes.

**CERTIFICATE OF SERVICE**

**Docket No. 921074-TP**

**I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 8th day of July, 1993, to the following:**

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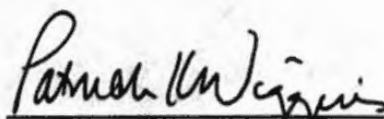
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