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October 22, 1993

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

Re: Docket No. 921074-TP

Dear Mr. Tribble:

Enclosed for filing in the above referenced docket are one (1) original and fifteen (15) copies of AT&T's Brief. Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

We are also submitting the brief on the enclosed 3.5" high density diskette in Microsoft Word for Windows format.

- ACK _____
- AFA 1
- APP _____
- CAF _____
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- CTR _____
- EAG _____
- LEG 1
- LIN 4
- OPC 1
- RCH _____
- SEC 1
- WAS _____
- OTH _____

MWT:sad

Attachments

cc: J. P. Spooner, Jr.
Parties of Record

Yours truly,

Michael W. Tye
Michael W. Tye

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In Re: Petition of INTERMEDIA)
COMMUNICATIONS OF FLORIDA, INC.) DOCKET NO. 921074-TP
for expanded interconnection)
for AAVs within LEC central) SUBMITTED FOR FILING:
offices.) October 22, 1993
)

BRIEF OF AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.

AT&T Communications of the Southern States, Inc.
(hereinafter "AT&T"), pursuant to Rule 25-22.056, Florida
Administrative Code, and the directive of the Florida Public
Service Commission (hereinafter the "Commission"), files
this post-hearing brief in the above-referenced docket and
respectfully requests that the Commission adopt the
positions advocated herein.

Proceedings to Date

This case comes before the Commission as the result of
a petition filed by Intermedia Communications of Florida,
Inc. (hereinafter "Intermedia") requesting an order
requiring the Local Exchange Companies (hereinafter the
"LECs") to permit AAVs to provide authorized services
through collocation arrangements in LEC central offices. In
order to address the issues presented by the question of

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expanded interconnection, this proceeding has been divided into two phases. Phase I involves the question of Private Line and Special Access expanded interconnection while Phase II will address issues regarding expanded interconnection of switched access. Hearings were held in Phase I on September 13 and 14, 1993, and, pursuant to the directive of the Commission, briefs were required to be filed by October 22, 1993. Phase I is now properly before the Commission for decision.

Basic Position of AT&T

AT&T's basic position in this case is that the Commission should find expanded interconnection to be in the public interest and should take the steps necessary to expedite its implementation. Expanded interconnection is the next logical step towards the introduction of competition into one of the remaining monopoly preserves of the LECs. Expanded interconnection will facilitate competition in the market for Special Access services by affording end-user customers greater opportunities to reach competing access suppliers, thus bringing the benefits of competition to a larger number of Special Access customers. As the Federal Communications Commission (hereinafter the "FCC") has determined, expanded interconnection clearly serves the public interest. Moreover, since it is neither desirable nor efficient to prescribe different conditions

for intrastate expanded interconnection than those which have already been prescribed for the interstate jurisdiction, this Commission should immediately order the implementation of expanded interconnection under the same terms and conditions that have been prescribed by the FCC in CC Docket 91-141 and defined in FCC Order 92-440.

Discussion of Issues

At the beginning of the hearings in this docket, the Commission voted to approve stipulations which had previously been entered into by the parties with respect to Issues 2, 3, 9, 10, and 19. Consequently, discussion of those issues has been omitted from this brief.

ISSUE 1: Is expanded interconnection for special access and/or private line service in the Public Interest?

***** SUMMARY of AT&T's Position: Yes. Benefits to be derived from expanded interconnection will include more rapid deployment of new technology, system redundancy, increased protection against disastrous service outages, increased service innovation, greater customer choice, and price competition that will reduce the cost of telecommunications services to all customers. *****

Discussion: Expanded interconnection is an interconnection arrangement that permits access providers other than the LECs to interconnect with the LECs' networks on the LECs' premises. Under this arrangement, the LECs are required to provide space at designated points within their networks for locating (either virtually or physically) the equipment of competing access providers. This allows end-user customers to utilize the existing loop facilities of the LECs for connection to the LEC central office and then select among available competitive access providers for the provision of special transport services connecting the LEC central office to the desired Interexchange Carrier (hereinafter "IXC") point of presence (hereinafter "POP").¹

Through the use of the LEC local loop, expanded interconnection brings the benefits of Special Access competition to a greater number of end-user customers than would be possible with traditional Alternative Access Vendor (hereinafter "AAV") services.² Thus, the adoption of expanded interconnection will facilitate the beginning of competition within the local exchange service area, thereby benefiting customers in much the same way that competition in other areas of the telecommunications industry (i.e.,

¹ Tr. Vol. II, Guedel, p. 191.

² Tr. Vol. II, Guedel, pp. 191-192.

interexchange services and customer provided equipment) has benefited customers over the years.³

The Florida Legislature has recognized the public benefits of telecommunications competition and has charged this Commission with the responsibility of encouraging:

"... cost-effective technological innovation and competition in the telecommunications industry if doing so will benefit the public by making modern and adequate telecommunications services available at reasonable prices."⁴

Competition through expanded interconnection will facilitate these results. Specifically, such competition will (1) facilitate customer choice and the development of new and innovative services designed or tailored to meet particular customer needs, (2) foster better price performance as competing vendors vie for customers in the open market place, and (3) assist the Commission in regulating the LECs by encouraging the LECs to become more efficient and more responsive to customer needs.⁵ Such benefits warrant a finding that expanded interconnection is in the public interest.

ISSUE 4: Does Chapter 364, Florida Statutes, allow the Commission to require expanded interconnection?

³ Tr. Vol. II, Guedel, p. 194.

⁴ Section 364.01(3)(c), Florida Statutes.

⁵ Tr. Vol. II, Guedel, p. 194.

***** Summary of AT&T's Position: Yes. Requiring expanded interconnection, under appropriate circumstances, is within the Commission's statutory discretion. *****

Discussion: There appears to be no statutory impediment to the issuance of an order by this Commission mandating expanded interconnection with LEC facilities by AAVs for the provision of authorized access services. Indeed, no party to this case actively took the position that Chapter 364, Florida Statutes, prohibits the Commission from requiring expanded interconnection for Private Line and Special Access services.

ISSUE 5: Does a physical collocation mandate raise federal or state constitutional questions about the taking or confiscation of LEC property?

***** Summary of AT&T's Position: No. *****

Discussion: AT&T is aware of the fact that several LECs have raised the question of unlawful confiscation at the federal level, and, in fact, have appealed the FCC's decision on this issue to the U.S. Circuit Court of Appeals for the District of Columbia. However, unless the federal courts rule to the contrary, AT&T submits that this Commission should find that there is no unlawful confiscation.

Unlawful confiscation has generally been found to be present in instances where public utilities have been required to provide service without adequate compensation. Such does not seem to be the case here. In fact, no party has advocated a position that would require the LECs to provide physical collocation without compensation. The Commission should insure that such compensation is adequate, but should not enter a finding that physical collocation is unconstitutional per se.

ISSUE 6: Should the Commission require physical and/or virtual collocation?

***** Summary of AT&T's Position:** In concert with the ruling adopted by the FCC, the Commission should require physical collocation where adequate space is available and virtual collocation in all other cases. ***

Discussion: The FCC has adopted physical collocation for the purposes of interstate expanded interconnection where adequate space is available and virtual collocation in all other cases. Recognizing that the same basic equipment will be utilized in the provision of both interstate and intrastate services, AT&T submits that this Commission should adopt the same collocation standards for intrastate expanded interconnection.

A uniform approach to interstate and intrastate collocation is justified by two facts. First, providing physical collocation where space is available and virtual collocation in other situations (as the FCC has mandated) will impose little or no additional burden on the LECs. Second, requiring different forms of expanded interconnection or developing different standards of expanded interconnection for intrastate, as opposed to interstate, equipment would simply not be feasible in the context of the LECs' networks which are comprised of facilities that are used jointly for interstate and intrastate purposes. Consequently, the imposition of disparate standards by this Commission could seriously impede the development of expanded interconnection to the detriment of end-user consumers.

ISSUE 7: What LECs should provide expanded interconnection?

***** Summary of AT&T's Position: The Commission should order all FCC designated "Tier 1" companies operating in Florida to provide expanded interconnection for the provision of Special Access services. *****

ISSUE 8: Where should expanded interconnection be offered?

***** Summary of AT&T's Position: Expanded interconnection should be offered at all rating points, including all LEC central offices. *****

ISSUE 11: Should the Commission require standards for physical and/or virtual collocation? If so, what should they be?

***** Summary of AT&T's Position: Yes. The Commission should require standards consistent with those adopted by the FCC in CC Docket 91-141. *****

Discussion: As previously discussed, the nature of the LECs' networks is such that facilities and equipment are jointly used in the provision of both interstate and intrastate telecommunications service. In such an environment, it is illogical, inefficient, and, indeed, virtually impossible to adopt two sets of expanded interconnection standards. Consequently, this Commission should require standards that are consistent with those adopted by the FCC in CC Docket 91-141.

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

***** Summary of AT&T's Position: No.** The purpose of expanded interconnection is to facilitate the entry of potential competitors into the monopoly preserves of the LECs. Since 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. ***

Discussion: Several parties to this docket have taken the position that expanded interconnection requirements should be reciprocal between the LECs and non-LEC collocators. Essentially, they argue that the same expanded interconnection requirements which apply to the LECs should be imposed on non-LEC entities that seek to collocate with LEC facilities. While this position may have the appearance of fairness on its face, a deeper look at the question leads to the conclusion that imposition of expanded interconnection requirements on non-LECs would be unnecessary and counterproductive. Indeed, such a requirement would serve to thwart competitive entry into the local exchange monopoly in contradiction of the goal set for this Commission by the Legislature in Section 364.01(3)(c), Florida Statutes.⁶

⁶ As previously discussed, that section, among other things, charges the Commission with the responsibility of encouraging competition in the telecommunications industry.

The essential purpose of expanded interconnection is to facilitate the entry of potential competitors into the historical bottleneck facilities of the LECs by removing a specific barrier to entry that is imposed by the existing LEC monopoly.⁷ To this end, the concept of expanded interconnection was designed to initiate competition into a traditional monopoly environment.⁸ Accordingly, expanded interconnection was developed to allow potential competitors the opportunity to access end-user customers on terms more equal to that of the LECs. Interconnection requirements as prescribed for the LECs should not be applicable for non-LEC competitors because none of those potential competitors possesses a monopoly. Indeed, the imposition of such requirements on non-LEC competitors would tend to frustrate rather than encourage the development of competition.⁹

In order to understand why reciprocal expanded interconnection requirements would be contrary to the public interest, it is necessary to consider the relative positions of the LECs and non-LECs in the local exchange area. Within the local exchange area, the LEC maintains a telecommunications network which reaches virtually every subscriber within the exchange. No AAV or IXC has such a network in place anywhere in Florida.¹⁰ Within the local

⁷ Ex. 6, p. 8.

⁸ Tr. Vol. II, Guedel, p. 200.

⁹ Ex. 6, p. 8.

¹⁰ Tr. Vol. II, Guedel, pp. 237-238.

exchange area, LECs typically have exclusive control over the central offices within which potential competitors seek to collocate. In essence, the LEC has a local exchange monopoly which no other party possesses.¹¹ The existence of the LEC monopoly network gives the LEC market power that can not be matched by any potential competitor in the local exchange area.¹² This disparity in market power between LEC and non-LEC competitors is what the concept of expanded interconnection was developed to negate. Consequently, by its very nature, expanded interconnection is not a concept which should be forced upon competitors who do not possess market power. The FCC implicitly recognized this principle by imposing expanded interconnection requirements only on the LECs in CC Docket 91-141. This Commission should adopt a similar approach in this docket.

Aside from the fact that an expanded interconnection requirement for non-LEC collocators is unnecessary, there are harmful effects which could result from such a requirement. First and foremost, the imposition of such a requirement would undoubtedly have a "chilling" effect on some potential collocators. That is, certain potential collocators are likely to forgo the opportunity for expanded interconnection with LEC facilities (particularly in the case of physical collocation) if they are, in turn, forced

¹¹ Tr. Vol. I, Canis, pp. 75-76.

¹² Tr. Vol. I, Canis, p. 76; Vol. II, Guedel, p. 238.

to open their facilities to a competitor which already possesses a virtual monopoly in the local exchange service area. The ultimate losers in that case, of course, would be the end-user customers whose choice of competitive access vendors would be lessened by the imposition of this unnecessary regulatory requirement on carriers that possess no market power within the local exchange area.

In addition to the "chilling" effect that the imposition of a reciprocity requirement would have on competition, such a requirement would have the harmful effect of creating a situation under which the rules for expanded interconnection are different for interstate and intrastate expanded interconnection. As previously mentioned, the FCC has imposed no expanded interconnection requirement on non-LECs. This is in keeping with the purpose of expanded interconnection which is to facilitate competitive entry into an existing LEC monopoly. If this Commission substantially departs from the standards set by the FCC, the inevitable outcome will be endless disputes as to what facilities are intrastate (as opposed to interstate) in nature, with the accompanying potential for chicanery and other mischief regarding the misrepresentation of which facilities are used for what purposes. Again, the result will be to impede the development of competition to the detriment of end-user consumers.

Finally, it should be noted that, even in the absence of a Commission mandate requiring reciprocity, there may

still be non-LEC collocators who will be willing to permit the LECs to collocate with their facilities. For instance, Intermedia has indicated its willingness to provide reciprocal interconnection arrangements for LECs or other parties.¹³ To the extent that other potential collocators sense a business advantage (either financial or otherwise) in permitting LEC collocation, they are likely to follow suit. However, permitting non-LEC collocators to allow LEC interconnection and requiring non-LEC collocators to allow LEC interconnection are two different matters. The first instance arises from the natural operation of the competitive market. The second situation, if mandated as proposed by some parties, would be the result of unwarranted interference with the operations of competitors that possess no market power whatsoever in the local exchange area. To the extent that the LECs actually need access to their customers through means other than their own comprehensive networks, the competitive market will provide such access through carriers like Intermedia without the necessity of a Commission mandate.

In deciding the question of reciprocity, the Commission should remain mindful of the goals set for telecommunications regulation by the Legislature. In addition to the encouragement of telecommunications competition,¹⁴ those goals include the elimination of

¹³ See Order No. PSC-93-1274-PHO-TP, p. 37.

¹⁴ Section 364.01(3)(c), Florida Statutes.

unnecessary regulatory restraints.¹⁵ In this case it is undeniably necessary for the Commission to impose certain regulatory requirements on the LECs to facilitate the introduction of competition into local exchange access services. However, the imposition of an expanded interconnection requirement on non-LEC competitors would result in an unnecessary regulatory requirement on competitive carriers with no market power, contrary to the goals set by the Legislature. Consequently, the Commission should reject any proposal that non-LECs be required to allow LECs and other parties to collocate with their networks.

ISSUE 13: What standards should be established for the LECs to allocate space for collocators?

***** Summary of AT&T's Position:** Space should be allocated on a first come, first serve basis in a manner consistent with the FCC's ruling in CC Docket 91-141. ***

ISSUE 14: Should the Commission allow expanded interconnection for non-fiber optic technology?

¹⁵ Section 364.01(3)(d), Florida Statutes.

***** Summary of AT&T's Position:** AT&T has no position on this issue at this time. ***

ISSUE 15: If the Commission permits expanded interconnection, what pricing flexibility should the LECs be granted for Special Access and Private Line services?

***** Summary of AT&T's Position:** AT&T would not oppose granting the LECs "zone-pricing" flexibility under the same parameters established by the FCC in Order No. 92-440 entered in CC Docket 91-141. ***

Discussion: Since the purpose of expanded interconnection is to facilitate the introduction of competition into the local exchange monopoly, it would not be inappropriate to grant the LECs some form of pricing flexibility for Special Access and Private Line services. However, in developing such pricing flexibility, the Commission should remain mindful of the fact that, even with expanded interconnection for AAVs and other carriers, the LECs will still retain ownership and control of a local exchange network that is unmatched by any other entity. Consequently, the LECs will still retain substantial market power in the local exchange area. Accordingly, it will be necessary for the Commission to temper the need for LEC pricing flexibility with safeguards to prevent the abuse of market power by the LECs.

The best way for the Commission to accomplish the desired result (i.e., LEC pricing flexibility coupled with safeguards against abuse of market power) is to grant the LECs "zone-pricing" flexibility under the same parameters established by the FCC in Order 92-440 entered in CC Docket 91-141. That arrangement allows for the establishment of three density pricing zones, requiring that the rates be averaged within each zone but allowing the rates to differ between pricing zones. Additionally, all rates must cover the cost incurred in providing the specific services.

ISSUE 16: If the Commission permits collocation, what rates, terms, and conditions should be tariffed by the LEC?

***** Summary of AT&T's Position:** Initially the LECs should file the same rates, terms, and conditions that have been filed with and approved by the FCC (assuming that such rates cover the cost incurred in providing the services.) ***

ISSUE 17: Should all Special Access and Private Line providers be required to file tariffs?

***** Summary of AT&T's Position:** AT&T has no position on this issue at this time. ***

ISSUE 18: What separations impact will expanded interconnection have on the LEC?

***** Summary of AT&T's Position: AT&T has no position on this issue at this time. *****

ISSUE 19: How would ratepayers be financially affected by expanded interconnection?

***** Summary of AT&T's Position: The financial impact on ratepayers should be negligible provided that the Commission and the LECs take the appropriate steps to move the price of intrastate switched access closer to the cost of providing the service. *****

Discussion: Initially, AT&T considered the financial impact of expanded interconnection on ratepayers to be negligible for several reasons. First, it must be noted that expanded interconnection only offers the opportunity for the entry of competition. It does not immediately transform the local exchange monopoly into a competitive market. Second, the LECs are likely to aggressively compete for Special Access and Private Line customers and are likely to retain the majority of their existing market share. Third, the facilities used by the LECs to provide Special Access are generally fungible. Thus, as long as the telecommunications market continues to grow, the LECs can find opportunities to

earn on these investments, even if they lose some Special Access customers.

At the hearings in this docket, however, Mr. Poag, the witness for United Telephone Company of Florida (hereinafter "United") pointed out some very real dangers to Florida ratepayers that are occasioned by the excessive level of switched access charges in the state. Specifically, because of the extraordinarily high level of intrastate switched access charges, large telecommunications users have been able to reduce their cost of telecommunications service by installing interstate Special Access services in lieu of using switched access service.¹⁶ To support his testimony, Mr. Poag gave examples involving actual United customers who had installed interstate Special Access services in lieu of using switched access thereby reducing total telecommunications costs. Those examples are frightening.

Mr. Poag's first example involved a customer that had previously been contributing \$200 per month in switched access charges and \$500 per month in local service charges to the intrastate jurisdiction. By using interstate Special Access in lieu of switched access, that customer was able to reduce his total monthly telecommunications bill by \$200 per month. More importantly, however, the customer, through the use of interstate Special Access service, reduced his contribution to the intrastate jurisdiction by approximately

¹⁶ Tr. Vol. III, Poag, pp. 507-514.

\$400 per month.¹⁷ Mr. Poag's other studies depicted a customer whose use of interstate Special Access resulted in a loss of approximately \$2,700 per month to the intrastate jurisdiction while reducing the customer's total monthly cost of telecommunications service by approximately \$1,900 per month.¹⁸ Each of these losses was occasioned by the lawful use of interstate Special access service which was precipitated, at least in part, by the excessive level of intrastate switched access charges in Florida.

The facts cited by Mr. Poag provide irrefutable evidence of the urgent need to reduce intrastate switched access charges. Currently, the incremental cost of providing switched access service by United is around 1 cent per minute. However, under the tariffs approved by this Commission, the price of that service (including originating and terminating access) is about 14 cents per minute, resulting in a 1300% markup on intrastate switched access services.¹⁹ Given the magnitude of that markup, it is not surprising that large users are looking for any lawful means to avoid using intrastate switched access services. Moreover, the implementation of expanded interconnection in

¹⁷ Tr. Vol. III, Poag, p. 512; Ex. 26, Service Bypass Case Study, Customer A.

¹⁸ Tr. Vol. III, Poag, pp. 513-514; Ex. 26, Service Bypass Case Study, Customer C.

¹⁹ Tr. Vol. III, Poag, pp. 530-531.

the interstate jurisdiction will only exacerbate this problem.

The only solution to the problem outlined by Mr. Poag in his testimony is an immediate reduction in intrastate switched access charges. United has sought to reduce such charges on at least two recent occasions,²⁰ but the Commission has failed to approve the reductions necessary to combat the flow of access and other intrastate revenues to the interstate jurisdiction. The Commission can only resolve this problem by taking every available opportunity to substantially reduce intrastate switched access charge rates. Failure to take such action will inevitably result in further losses of intrastate revenues to the financial detriment of intrastate ratepayers.

ISSUE 21: Should the Commission grant ICI's petition?

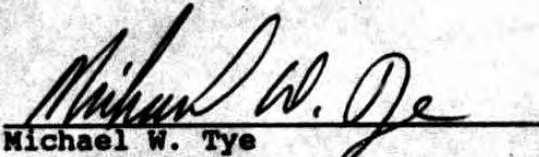
***** Summary of AT&T's Position: The Commission should grant Intermedia's petition consistent with the positions taken by AT&T in this docket. *****

²⁰ Tr. Vol. III, Poag, pp. 531.

Conclusion

The record in this docket demonstrates that expanded interconnection is in the public interest. Accordingly, the LECs should be required to provide expanded interconnection to parties desiring to collocate under the same terms and conditions as those set forth by the FCC in CC Docket 91-141. A bifurcated approach to expanded interconnection, with separate and distinct requirements for intrastate (as opposed to interstate) expanded interconnection would not be feasible and would result in an unworkable set of standards. Moreover, the imposition of a requirement that non-LECs be required to provide expanded interconnection to the LECs would be contrary to the purposes of expanded interconnection and would serve to thwart the introduction of competition into the local exchange monopoly. Finally, the Commission must recognize the need to substantially reduce intrastate switched access charges and must take every available opportunity to implement such reductions in order to preserve the stream of intrastate revenue which currently helps to support local telecommunications service.

Respectfully submitted this 22nd day of October, 1993,

A handwritten signature in cursive script, appearing to read "Michael W. Tye", is written over a horizontal line.

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ATTORNEY FOR AT&T
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CERTIFICATE OF SERVICE

DOCKET NO. 921074-TP

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand-delivery to the following parties on this 22nd day of October, 1993:

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