FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

August 3, 1995

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS [REITH, CHASE]
DIVISION OF LEGAL SERVICES [CANZANO]

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

AGENDA: AUGUST 15, 1995 - REGULAR - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

PANEL ITEM: COMMISSIONERS CLARK AND JOHNSON

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\CMU\WP\[redacted]

CASE BACKGROUND

This matter came to hearing as a result of a Petition by Intermedia Communications of Florida, Inc. (Intermedia or ICI) to permit alternative access vendor (AAV) provision of authorized services through collocation arrangements in local exchange company (LEC) central offices. In order to address Intermedia's petition, broader questions regarding private line and special access expanded interconnection needed to be resolved. In turn, these broader issues raised larger questions regarding expanded interconnection for switched access. However, because the switched access issues did not need to be resolved prior to answering Intermedia's petition, the Commission addressed only the matter of private line and special access during the hearing held September 13 & 14, 1993. Expanded interconnection of switched access was addressed during the Phase II hearing which was held August 22-24, 1994.

By Order No. PSC-94-0285-FOF-TP, issued March 10, 1994, the Commission decided various issues related to private line and special access interconnection. The parties have filed numerous motions for reconsideration and responses to those motions regarding the final order in this docket. This recommendation addresses the relevant motions under each applicable issue as set forth below.

In addition to motions for reconsideration or clarification, parties have filed certain procedural motions, including a motion to strike a response, and two motions for stay of the Order.

On March 31, 1994, GTE Florida, Incorporated filed a Petition for Extension of the filing date for the zone-density pricing plans and tariff proposals. On June 6th, GTEFL withdrew its motion and stated that it would file the plan for special access within approximately one week. Accordingly, staff will not address it, because the point is moot.

On April 18, 1994, Southern Bell filed a Motion to Strike Cross Motion for Reconsideration of Teleport Communications Group, Inc. On April 21, 1994, Southern Bell filed a Notice of Withdrawal of Motion to Strike Teleport's Cross Motion.

At the federal level, 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.

Physical collocation is an offering that enables an interconnector to locate its own transmission equipment in a segregated portion of the 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.

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.

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 was 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. This recommendation incorporates the Commission's decision from Phase II and addresses the parties' requests for reconsideration of the Phase I order. It should be noted that the issues in this docket were ruled on under the governing statute at that time.

STANDARD OF REVIEW

The appropriate standard for review for a motion for reconsideration is that which is set forth in Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962). The purpose of a motion for reconsideration is to bring to the attention of the Commission some material and relevant point of fact or law which was overlooked, or which it failed to consider when it rendered the order in the first instance. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla 1st DCA 1981). It is not an appropriate venue for rehashing matters which were already considered, or for raising immaterial matters which even if adopted would not materially change the outcome of the case.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission on its own motion reconsider its decision in Phase I regarding mandatory physical collocation so that it is consistent with the Phase II decision requiring virtual collocation with the option of providing physical collocation?

RECOMMENDATION: Yes. The Commission on its own motion should reconsider its decision in Phase I regarding mandatory physical collocation so that it is consistent with the Phase II decision. The local exchange companies should be required to provide virtual collocation for private line and special access services to all interconnectors upon request. The LECs should be exempted from this requirement in offices where they opt to provide physical collocation; once space for physical collocation is exhausted, the local exchange company must provide virtual collocation. The Commission should lift the stay on the Phase I Order, Order No. PSC-94-0285-FOF-TP, and revise it to require virtual collocation so that it is consistent with the decision made in Phase II. [CANZANO]

STAFF ANALYSIS: In the Phase I Order, Order No. PSC-94-0285-FOF-TP, issued March 10, 1994, the Commission required the local exchange companies (LECs) to provide physical collocation to all interconnectors upon request as envisioned by the Federal Communications Commission (FCC) and also allowed interconnectors to choose virtual collocation if desired. The Commission also ordered other requirements to implement its decision to mandate physical collocation. Although the Commission noted that it was not bound by any interstate policy, its decision in Phase I was essentially consistent with the FCC's decision on most issues. (Order, page 5) The Commission also 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. (Order, page 12)

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 v. FCC, No. 92-1619, 1994 WL 247134 (D.C. Cir., June 10, 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 was consistent with the Bell Atlantic decision. (Order No. FCC 94-190) The FCC required the LECs to provide expanded interconnection through virtual collocation unless the LEC chose to offer physical collocation. If the LEC chose to offer physical collocation, it was then exempted from the mandate to provide virtual collocation. However, once the physical space has been exhausted, the LEC then must offer virtual collocation.

By Order No. PSC-94-1102-FOF-TP, issued September 7, 1994, the Commission stayed the Phase I Order because it believed that the decisions in Phases I and II should be consistent. The Commission stayed the Phase I Order and held in abeyance all outstanding motions for the Phase I Order until a decision was made in Phase II.

In Phase II, the Commission stated that "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." Order No. PSC-95-0034-FOF-TP, issued January 9, 1995, page 30. Thus, to be consistent with the FCC, the Commission ordered that

> the local exchange companies shall be required to provide virtual collocation for switched access interconnection to all interconnectors upon request. The local exchange companies shall be exempted from this requirement in offices where they opt to provide physical collocation; once space for physical collocation is exhausted, the local exchange company must provide virtual collocation. Phase II Order, page 64.

Staff recommends that the Commission on its own motion reconsider its decision in Phase I regarding mandatory physical collocation so that it is consistent with the Phase II decision. The local exchange companies should be required to provide virtual collocation for private line and special access services to all interconnectors upon request. The LECs should be exempted from this requirement in offices where they opt to provide physical collocation; once space for physical collocation is exhausted, the local exchange company must provide virtual collocation. Therefore, staff recommends that the Commission should lift the stay on the Phase I Order, Order No. PSC-94-0285-FOF-TP and revise it to require virtual collocation so that it is consistent with the decision made in Phase II.

ISSUE 2: Should the Commission grant Southern Bell's and GTEFL's Motions for Reconsideration regarding the Commission's decision that the local exchange companies must provide mandatory physical collocation for private line and special access services?

RECOMMENDATION: No. If the Commission accepts staff's recommendation for Issue 1, the portions of Southern Bell's and GTEFL's Motions for Reconsideration regarding the Commission's decision that the local exchange companies must provide mandatory physical collocation for private line and special access services are rendered moot. **[CANZANO]**

STAFF ANALYSIS: On March 25, 1994, GTEFL and Southern Bell filed Motions for Reconsideration of Order No. PSC-94-0285-FOF-TP, issued March 10, 1994 (Phase I Order). On April 6, 1994, Intermedia Communications of Florida, Inc. (Intermedia) filed responses to GTEFL's and Southern Bell's motions. Also on April 6, 1994, Teleport filed a Cross Motion for Reconsideration and response to Southern Bell's and GTEFL's motions.

Specifically, Southern Bell and GTEFL sought reconsideration of the Commission's finding that mandatory physical collocation is constitutionally permissible. The companies argue at great length that mandatory physical collocation is an unconstitutional taking. Intermedia and Teleport respond that the Commission already considered and rejected the companies' arguments.

If the Commission accepts staff's recommendation for Issue 1 requiring the LECs to provide virtual collocation for private line and special access services upon request by interconnectors, then staff recommends that the LECs' motions for reconsideration regarding physical collocation are rendered moot.

ISSUE 3: Should the Commission grant Southern Bell's Motion to Strike Time Warner's Response to FCTA's Motion for Reconsideration?

RECOMMENDATION: Yes. The Commission should grant Southern Bell's Motion to Strike Time Warner's Response to FCTA's Motion for Reconsideration. **[CANZANO]**

STAFF ANALYSIS: On March 25, 1994, Florida Cable Television Association, Inc. (FCTA) filed a Motion for Reconsideration and/or Clarification of Order No. PSC-94-0285-FOF-TP. March 25th was the last day to file a motion for reconsideration. On April 1, 1994, Time Warner AxS of Florida, L.P. (Time Warner) filed a response to FCTA's motion, to which Southern Bell filed a Motion to Strike on April 11, 1994.

Southern Bell argues that Time Warner's response should be governed by Rule 25-22.037(2)(b), Florida Administrative Code, and the Florida Rules of Civil Procedure. Southern Bell asserts that since Time Warner's response concurs with rather than opposes FCTA's Motion for Reconsideration, it should be excluded from consideration. Rule 25-22.037(2)(b) provides in part that "other parties to a proceeding may, within seven (7) days after service of a written motion, file written memoranda in opposition." Also, Southern Bell argues that neither Chapter 25, Florida Administrative Code, nor the Florida Rules of Civil Procedure authorize this type of concurring pleading.

Rule 25-22.037(2)(b), Florida Administrative Code, addresses general motion practice rather than motions for reconsideration, for which Rule 25-22.060, Florida Administrative Code, has been promulgated. Time Warner argues that a plain reading of Rule 25-22.060 specifically allows a party to file such a responsive memorandum:

> (b) A party may file a response to a motion for reconsideration . . .
>
> (f) . . . A party who fails to respond to file a written response to a point on reconsideration is precluded from responding to that point during the oral argument.

Time Warner also notes that the numerous omissions of the "in opposition" language in Rule 25-22.060 as compared with Rule 25-22.037, evidences that these responses do not need to be limited to those in opposition. In such situations of affirmative omission of language, the case law dictates the rule of expressio unius est exclusio alterius, the mention of one thing implies the exclusion of all other. See Russello v. U.S., 464 U.S. 16, 23 (1983); Devin v. City of Hollywood, 351 So.2d 815 (Fla 1976); and Graham v. Azar, 204 So. 2d 193 (Fla. 1967).

The last day to file a motion for reconsideration of the final order was March 25. 1994. If Time Warner wanted the Commission to reconsider this issue, it should have filed a timely motion for reconsideration regarding the matter or joined in FCTA's Motion. Time Warner's April 1st response is an inappropriate second bite at reconsideration under the guise of a response. It is nothing more than an attempt to rehabilitate and bolster FCTA's Motion. Accordingly, staff recommends that Time Warner's response should be stricken.

ISSUE 4: Should the Commission grant GTEFL's petition for a stay of mandatory collocation pending the outcome of the federal appeal of the Federal Communication Commission's decision regarding the taking issue?

RECOMMENDATION: No. GTEFL's petition for stay is rendered moot. On its own motion, the Commission stayed Order No. PSC-94-0285-FOF-TP (Phase I Order) mandating physical collocation for expanded interconnection by Order No. PSC-94-1102-FOF-TP, issued September 7, 1994. Further, the Commission decided to consider the Phase I tariffs in Phase II of this docket which effectively stays implementation of the service by Order No. PSC-94-0614-FOF-TP, issued May 23, 1994. **[CANZANO]**

STAFF ANALYSIS: On March 25, 1994, GTEFL filed a Petition for Stay of the physical collocation mandate included in the final order in this docket.

GTEFL requests a stay of the physical collocation mandate at least for a period to allow for the federal appeal in the United States Court of Appeals for the District of Columbia Circuit of the Federal Communications Commission (FCC) physical collocation mandate. GTEFL requests that the Commission stay its Florida physical collocation mandate because the constitutional status of the Florida decision is linked to the fate of the FCC. GTEFL asserts that a stay is necessary to prevent irreparable harm to LECs and their ratepayers which, if the physical collocation mandate were overturned, there would be no guarantee that the LECs would recover their costs or would be compensated for inefficiencies and disruptions to their operations.

GTEFL seeks a stay until the conclusion of Phase II, because expanded interconnection for switched access raises the same constitutional issues with regard to collocation that switched access interconnection did. In the alternative, GTEFL requests a shorter period of stay, just until a decision is rendered in the pending federal appeal, which it believes, based on the Court's past practices, would be two to four months from the date of oral argument.

On April 6, 1994, Intermedia responded to GTEFL's petition for stay. Intermedia argues that a stay is unnecessary and undesirable. In addition, Intermedia argues, the Commission was aware of the federal appeal when it decided to implement mandatory physical collocation.

In determining whether to grant a stay, Rule 25-22.061, Florida Administrative Code, provides that the Commission may consider, among other things, whether 1) the petitioner is likely to prevail on appeal; 2) the petitioner has demonstrated that he is likely to suffer irreparable harm if the stay is not granted; and 3) the delay will cause harm or be contrary to the public interest.

Staff believes that GTEFL's petition for stay is rendered moot. On its own motion, the Commission stayed Order No. PSC-94-0285-FOF-TP (Phase I Order) mandating physical collocation for expanded interconnection by Order No. PSC-94-1102-FOF-TP, issued September 7, 1994. Further, the Commission decided to consider the Phase I tariffs in Phase II of this docket which effectively stays implementation of the service by Order No. PSC-94-0614-FOF-TP, issued May 23, 1994.

ISSUE 5: Should the Commission reconsider its decision to extend expanded interconnection to the DS0 level?

RECOMMENDATION: No. The Commission should not reconsider its decision which required LECs to extend expanded interconnection under tariff to the DS0 level. Also, Southern Bell should file appropriate tariff provisions regarding interconnection at the DSO level as required by Order No. PSC-94-0285-FOF-TP, when it files revisions to its special access and private line expanded interconnection tariffs.

In addition, since the Phase II Order did not specify when all LECs were to file revisions to their special access and private line tariffs, staff recommends that all local exchange companies file the appropriate revisions to their special access and private line expanded interconnection tariffs no later than 60 days after the Phase I Reconsideration Order becomes final. [CHASE]

STAFF ANALYSIS: In its Motion filed March 25, 1994, Southern Bell requests that the Commission reconsider its decision to require LECs to extend expanded interconnection under tariff to the DS0 level. Southern Bell argues that the basis for extending tariffed interconnection to the DS0 level is not supported by the record in this case. Southern Bell notes that the Commission's rationale for extending interconnection to the DS0 level rather than permitting it on a case-by-case basis is that it "might" result in unnecessary delays for interconnectors. Southern Bell contends that there is no testimony to support this conclusion.

Southern Bell argues that because interconnection has been required for only fiber DS0 facilities, there will likely be only a limited demand for this type of DS0 interconnection. Nevertheless, it would require the LECs to create an entirely new tariff, including the preparation of cost studies and of all other supporting information that must necessarily be filed as part of a proposed tariff. Southern Bell contends that this is an unnecessary burden in light of the fact that the number of collocation requests for DS0 fiber-based interconnection will, in all likelihood, be relatively few. Southern Bell argues that there was no evidence presented at the hearing that requests for DS0 collocation cannot be handled to the satisfaction of collocators without the filing of a tariff.

Furthermore, Southern Bell states that the Order contains repeated references to the desirability of ordering collocation for intrastate purposes in a manner consistent with the FCC's ruling. Southern Bell notes that the FCC did not require DS0 interconnection, thus this Commission is making a specific exception to its general approach of pursuing consistency with the FCC.

On April 6, 1994, Teleport (TCG) filed its response in opposition to Southern Bell's Motion for reconsideration. TCG states that Southern Bell's Motion confuses the facilities used by the collocator with the facilities used by the LEC. Once the fiber is in the collocation space, it is multiplexed down into lower transmission speeds and interconnected to the LEC network, within the central office, using copper facilities.

In response to Southern Bell's argument that there will be little if any demand for DS0 interconnection, TCG argues that this assumption is incorrect. TCG states that its national experience is that it has successfully completed thousands of interconnections, at DS1 and DS0 levels, and few if any use fiber facilities. TCG also notes in its response that Pacific Telephone offers DS0 interconnection in its federal tariff and New York Telephone offers DS0 interconnection in its state collocation offerings. Staff notes that TCG's argument regarding the demand for DS0 was not a part of the record nor was it used by the Commission in its decision to extend expanded interconnection under tariff to the DS0 level.

Furthermore, in response to Southern Bell's claim that the Commission did not require interconnection of non-fiber optic technology, TCG contends that the Commission was referring to the transmission equipment placed in the collocation cage by the interconnector. TCG states that "the Commission addressed technology to be used by the interconnector -- it did not and should not have addressed the type of LEC technology to which an interconnector would connect its transmission equipment. Therefore, the Order neither prohibits nor requires interconnection with a certain type of DS0."

On April 6, 1994, Intermedia Communications filed its response in opposition to Southern Bell's request for the Commission to reconsider extending interconnection to the DS0 level. Intermedia argues that, "[a]s noted in Southern Bell's motion, the Commission considered and rejected the company's request to handle requests for interconnection at the DS0 level on a case-by-case basis. Reconsideration is neither necessary nor proper."

Staff disagrees that the evidence in this proceeding does not support extending collocation to the DS0 level. As the Order correctly reflects, the Commission agreed with Teleport's witness that expanded interconnection to the DS0 level will extend the benefits of competition to a greater number of users. (Order at p. 26) Southern Bell's claim is incorrect that there was no evidence presented at the hearing that requests for DS0 collocation cannot be handled on a case-by-case basis. The rationale to require LECs to tariff collocation to the DS0 level is the same rationale to require LECs to tariff collocation for DS1 and DS3. The Commission's Order states that:

> [W]e find that such a negotiation has the potential to be one sided since the LECs own and control the central offices. (Order at p. 12)

Staff believes that the evidence in this proceeding clearly supports the Commission's decision to require LECs to extend expanded interconnection under tariff to the DS0 level. (Kouroupas, TR 245) Staff agrees with Teleport, that Southern Bell's Motion confuses the facilities used by the collocator with the facilities used by the LEC. As stated in Teleport's response, the fiber brought into the collocation space is then multiplexed down into lower transmission speeds and interconnected to the LEC network using copper facilities. Contrary to Southern Bell's position, the Commission did not require a fiber interconnection from the interconnector's facilities to the LEC's facilities. Staff believes that Southern Bell is confusing entrance facilities with facilities used to interconnect the collocators' equipment to the LEC network.

In response to Southern Bell's argument regarding consistency with the FCC's policy, the Commission adopted a stipulation which stated that the FPSC is not restricted in its ability to impose forms and conditions of expanded interconnection that are different from those imposed by the FCC's order. In this Issue, the Commission believed that extending interconnection to the DS0 level would increase competitive opportunities for end users. Therefore, the Commission decided to order a policy that was different from the policy imposed by the FCC.

Also, staff agrees with Intermedia that the Commission considered and rejected Southern Bell's request to handle DS0 interconnection on a case-by-case basis. Therefore, staff recommends that the Commission deny Southern Bell's request that the Commission reconsider its decision to require LECs to extend expanded interconnection under tariff to the DS0 level.

In its tariff filing, Southern Bell omitted filing a provision regarding interconnection at the DSO level, pending the outcome of it Motion for Reconsideration. Based on the foregoing, staff recommends that the Commission require Southern Bell to file the appropriate tariff provisions regarding interconnection at the DSO level as required by Order No. PSC-94-0285-FOF-TP, when it files revisions to its special access and private line expanded interconnection tariffs.

Since the Phase II Order did not specify when all LECs were to file revisions to their special access and private line tariffs, staff recommends that all local exchange companies file the appropriate revisions to their special access and private line expanded interconnection tariffs no later than 60 days after the Phase I Reconsideration Order becomes final. This is the same time frame the LECs have to file the switched access expanded interconnection tariffs, per Order No. PSC-95-0034-FOF-TP.

ISSUE 6: Should the Commission approve Intermedia's Motion for Clarification to specify a "fresh look" policy of 180 days rather than the 90 days specified in the Commission Order?

RECOMMENDATION: No. The Commission should deny Intermedia's request for clarification to extend the fresh look period from 90 days to 180 days. **[REITH]**

STAFF ANALYSIS: By Order No. PSC-94-0285-FOF-TP, the Commission adopted a "fresh look" policy for expanded interconnection for special access and private line. The Order states that:

> [T]he tariffs shall contain a fresh look provision consistent with the fresh look policy adopted by the FCC. Specifically, customers with LEC special access services with terms equal to, or greater than, three years, entered into on, or before, February 1, 1994, shall 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 shall 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.

In its Motion for Clarification, Intermedia states that the Commission's decision does not perfectly track the FCC's fresh look policy. Specifically, Intermedia refers to the FCC's Order on Reconsideration adopted August 3, 1993 (released September 2, 1993) which extended the FCC's original fresh look period from 90 days to 180 days.

Intermedia argues that the Commission clearly announced its intent to adopt the FCC's fresh look policy in Order No. PSC-94-0285-FOF-TP. Therefore, Intermedia requests that the Commission clarify its order to specify a fresh look of 180 days in order to ensure that its policy is, as intended, perfectly consistent with the FCC's fresh look policy.

Staff recommends that the Commission deny Intermedia's request to extend the fresh look period from 90 days to 180 days. Contrary to Intermedia's claim, the Commission did not intend to adopt a fresh look policy that was perfectly consistent with the FCC's fresh look policy. Although most of the Commission's Order tracks the decisions of the FCC, the Commission approved a stipulation in Issue 3 which states that:

> The FCC's Order on Expanded Interconnection does not restrict the FPSC's ability to impose forms and conditions of expanded interconnection that are different from those opposed by the FCC's order. Expanded interconnection for intrastate special access/private line falls under the FPSC's jurisdiction and the Commission is not bound by any interstate policy.

Furthermore, the Commission decision to institute a fresh look policy of 90 days after expanded interconnection arrangements are available in a given central office was based on the FCC's "Report and Order and Further Notice of Proposed Rulemaking" adopted September 17, 1992 and released October 16, 1992 of which the Commission took official recognition at the hearing. The FCC order referenced by Intermedia was not a part of the record in this proceeding. Therefore, staff does not believe that the Commission should approve Intermedia's request to extend the fresh look period from 90 days to 180 days. Staff believes that the 90 day period is sufficient, especially considering that expanded interconnection for special access and private line services will not be available until after Phase II in this docket. The motion should be denied because there has been no error or omission of fact or law shown.

ISSUE 7: Should the Commission approve Southern Bell's request for clarification that the fresh look policy applies only to special access and not private line services?

RECOMMENDATION: No. The Commission should not approve Southern Bell's request for clarification that the fresh look policy applies only to special access and not private line services. However, the Commission should clarify the ordering paragraph to state:

> ORDERED that the tariffs shall contain a fresh look provision consistent with the fresh look policy adopted by the FCC. Specifically, customers with LEC special access and **private line** services with terms equal to, or greater than, three years, entered into on, or before, February 1, 1994, shall be permitted to switch to competitive alternatives during the 90 day period after expanded interconnection arrangements are available in a given CO...

Also, Southern Bell should file appropriate tariff provisions regarding the fresh look policy as required by Order No. PSC-94-0285-FOF-TP, within 60 days after the Phase I reconsideration order becomes final. **[REITH]**

STAFF ANALYSIS: Southern Bell's Motion for Reconsideration, for Clarification, and for Stay, requests clarification as to one aspect of Order No. PSC-94-0285-FOF-TP provision regarding the "fresh look" policy.

In its Motion, Southern Bell notes that at the conclusion of the subject order, the order states:

> ORDERED that the tariffs shall contain a fresh look provision consistent with the fresh look policy adopted by the FCC. Specifically, customers with LEC special access services with terms equal to, or greater than, three years, entered into on, or before, February 1, 1994, shall be permitted to switch to competitive alternatives during the 90 day period after expanded interconnection arrangements are available in a given CO.

Contrary to this ordering paragraph, Southern Bell points out that in the body of the Order, there is a discussion regarding fresh look that refers to both special access service and private line service. Southern Bell claims in its Motion that it assumes that the Commission only intended to apply the fresh look provision to special access service and requests a clarification to this effect.

Southern Bell argues that:

> As was cited in the Order, the principal testimony that addressed the fresh look provision was that of the witness for Teleport. As the Order notes, "Teleport argu[ed] that the Commission should adopt a 'fresh look' provision designed to allow consumers in the special access market to choose a carrier without incurring substantial penalties." (Order at p. 27) In point of fact, Teleport's witness' testimony on this point dealt exclusively with the reasons that he believed a fresh look should be allowed for special access. There was no mention in his testimony of extending the fresh look provisions to private line services. Neither has Southern Bell been able to find in its review of the record any evidence to support extending the fresh look policy to private line service.

Furthermore, Southern Bell argues that the Order recites in numerous places the intention of the Commission to order expanded interconnection in a manner consistent with the FCC. Southern Bell claims that the action that is consistent with both the testimony in this case and the prior action by the FCC is to order that the "fresh look" policy apply only to special access services.

In response to Southern Bell's motion, Intermedia agrees that the Order is internally inconsistent and that clarification is proper. However, Intermedia contends that Southern Bell incorrectly argues that the Commission intended to apply the fresh look provision only to special access.

Intermedia cites to page 28 of the Commission's Order which states that "customers of LEC private line and special access services with terms equal to or greater than three years ... shall be permitted to switched to competitive alternatives ...." Based on this section of the Order and the staff's recommendation which the Commission voted to accept, Intermedia argues that the Commission clearly intended to make the fresh look policy available to both LEC special access and private line customers.

In response to Southern Bell's claim that there is no evidence to support the application of the fresh look policy to LEC private line customers, Intermedia states that the Commission made a policy decision to apply the fresh look opportunity to private line customers and special access customers based on the Commission's determination to increase the possibilities for a competitive marketplace. Therefore, Intermedia argues that Southern Bell has presented no factual reason to differentiate between these two sets of customers.

Staff agrees with both Southern Bell and Intermedia that the Commission's Order should be clarified. However, staff disagrees with Southern Bell's assertion that the Commission intended to institute a fresh look policy only for special access services. The purpose for instituting a fresh look provision was to provide end users the ability to take advantage of competitive opportunities which may not have been available in the past. The Commission found that:

> Upon review, we find that introducing competition, or extending the scope of competition, provides end users of particular services with opportunities that were not available in the past. However, these opportunities are temporarily foreclosed to end users if they are not able to choose competitive alternatives because of substantial financial penalties for termination of existing contract arrangements. A fresh look proposal will enhance end user's ability to exercise choice to best meet its telecommunication needs. (Order at p. 28)

The body of the Order further states:

> Thus, customers of LEC private line and special access services with terms equal to, or greater than three years... (Order at p. 28)

Although Teleport's witness' testimony only argues that the Commission should adopt a fresh look provision designed to allow customers in the special access market to choose a carrier without incurring substantial penalties, staff believes the Commission clearly intended to institute the fresh look provision for both special access and private line. The purpose for granting the fresh look provision was to provide end users of particular services with an opportunity to choose alternative carriers that were not available in the past. This would apply to both special access and private line services. To limit the fresh look provision to special access services would deny end users of private line services the benefits of expanded interconnection.

Southern Bell's argument that the Order recites in numerous places the intention of the Commission to order expanded interconnection in a manner consistent with the FCC, and that the FCC did not apply the fresh look provision to private line service, is without merit. The purpose of this proceeding was to determine whether the Commission should allow expanded interconnection for both intrastate special access and private line. The FCC's expanded interconnection proceeding was limited to special access because LECs do not provide interstate private line services.

Staff recommends that the Commission deny Southern Bell's request to clarify the Order to state that the fresh look provision applies only to special access services. However, staff recommends that the Commission clarify the ordering paragraph to state:

> ORDERED that the tariffs shall contain a fresh look provision consistent with the fresh look policy adopted by the FCC. Specifically, customers with LEC special access and __private line__ services with terms equal to, or greater than, three years, entered into on, or before, February 1, 1994, shall be permitted to switch to competitive alternatives during the 90 day period after expanded interconnection arrangements are available in a given CO...

In its tariff filing, Southern Bell omitted filing provisions regarding the Commission ordered fresh look policy, pending the outcome of it Motion for Reconsideration. Based on the foregoing, staff recommends that the Commission require Southern Bell to file the appropriate tariff provisions regarding fresh look, as required by Order No. PSC-94-0285-FOF-TP, within 60 days after the Phase I reconsideration order becomes final.

ISSUE 8: Should the Commission grant FCTA's Motion for Reconsideration/Clarification regarding its decision to approve zone pricing flexibility on a conceptual basis and its decision to require local exchange companies to file reports regarding streamlining the contract service arrangement process?

RECOMMENDATION: No. FCTA's Motion should be denied on both procedural and substantive grounds. **[REITH, CANZANO]**

STAFF ANALYSIS: FCTA's Motion for Reconsideration should be denied for both procedural and substantive reasons. Essentially, GTEFL and Southern Bell agree. FCTA asserts that the provisions of Chapter 364 make clear that price flexibility can only be granted to services deemed to be subject to effective competition by the Commission. FCTA also argues that contract service arrangement (CSA) authority constitutes pricing flexibility under Section 364.338, Florida Statutes, and that LECs should not be permitted to use CSAs for private line and special access services until they are deemed "effectively competitive" under Chapter 364.

Procedurally, FCTA's Motion for Reconsideration should be rejected. In its prayer for relief FCTA asks the Commission to:

> (1) discontinue CSA authority for private line and special access service until such services are deemed effectively competitive pursuant to Section 364.338(2)(a)-(g); or alternatively (2) clarify the Final Order to require the LECs to demonstrate that private line and special access services are effectively competitive and, only then, to justify why deviation from FCC parameters through CSA authority should be granted.

FCTA raises these issues for the first time in its Motion for Reconsideration. The notion that contract service arrangements have been legally improper since the 1990 statutory revisions to Chapter 364 was not an issue in this proceeding and was not argued in FCTA's Brief. The legal basis for CSAs specifically nor other types of flexible pricing generally was not raised until now. The only issue identified for Phase I regarding pricing flexibility was Issue 15:

> If the Commission permits expanded interconnection, what pricing flexibility should the LECs be granted for special access and private line services?

FCTA provided no testimony on this point. In its Posthearing Brief, FCTA opposed additional pricing flexibility generally but did not raise its current position that any flexible pricing for any service is prohibited by Chapter 364 unless such service is determined to be effectively competitive pursuant to Section 364.338. Rule 25-22.056(3)(a), Florida Administrative Code, requires that:

> [e]ach party to a proceeding shall file a post-hearing statement of issues and positions . . . Any issue or position not included in a post-hearing statement shall be considered waived.

FCTA's failure to raise this new position in its post-hearing statement constitutes a waiver of its new position that flexible pricing is prohibited unless granted pursuant to a decision under Section 364.338. Moreover, FCTA's blanket indictment of the Commission's current policies regarding flexible pricing extends well beyond the limits of the instant proceeding and is inappropriate in this context. Accordingly, staff recommends that FCTA's Motion should be denied on procedural grounds.

FCTA's Motion should also be denied for substantive reasons. In its Motion FCTA states that:

> [p]rice flexibility can only be granted for a LEC service that is first deemed subject to effective competition pursuant to the criteria of Section 364.338(2)(a)-(g).

FCTA also states that:

> [a]ll LEC services, including private line and special access services, are currently monopoly services.

From these two statements FCTA seeks to reverse a decade of Commission policy directed to transitioning the telecommunications industry to a competitive environment. Under the guise of reconsideration or clarification, FCTA seeks to preclude all forms of flexible pricing for any service until such service is determined to be effectively competitive.

FCTA misconstrues both the language and legislative intent of the Chapter 364. The flaw in FCTA's argument is that it confuses the notion of monopoly service as an economic term with the regulatory definition of a monopoly service as set forth in Section 364.02(3), Florida Statutes. This section defines monopoly service as a "telecommunications service for which there is no effective competition either in fact or law." In economics, a monopoly service is where there is only one provider of the service; there are no other providers competing to provide the service. Economic competition means that there are multiple providers seeking to provide the same or similar services. In terms of regulatory labels, FCTA is correct; there are only monopoly services and effectively competitive services. However, FCTA confuses the regulatory label "monopoly service" with the economic label. Under this notion, no service would be subject to any competition in any form and, therefore, no pricing flexibility would be needed. This is simply not the case in the telecommunications industry.

Under the regulatory term "monopoly service" is found a broad array of services subject to varying levels of economic competition. It is with this economic competition that the Commission must grapple in helping competition flourish in the telecommunications industry. In the Commission's efforts, varying forms of pricing flexibility have been the tools used to foster competition.

Since the advent of competition in the telecommunications industry, competition has been increasing in both the variety of services subject to competition and the level of competitive effort for a given service. Competition runs a broad continuum from an economic monopoly protected by statute, such as basic local residential exchange service, to a highly competitive service, such as intraLATA toll. The regulatory definition acknowledges and encompasses this broad range. Pricing flexibility is the principal tool used to allow the LECs to compete in those areas and for those services where there are multiple providers.

Under the FCTA's notion, the Commission has no flexibility to deal with the emerging levels of competition until competition has advanced to a sufficient degree that it can be determined to be effective competition pursuant to Section 364.338. Such severe limits on the Commission's ability to facilitate the transition to a competitive environment is inconsistent with the legislative revisions to Chapter 364 that clearly state the Legislature's intent that there be more competition in the telecommunications industry where consistent with the public interest. The revisions to Chapter 364 were intended to grant greater flexibility to the Commission to deal with competition, not less. Contrary to FCTA's contention, there is no language in Chapter 364 that would seek to restrict the Commission's flexibility in fostering competition.

The revisions to Chapter 364, Florida Statutes in 1990 were designed to give the Commission greater flexibility to its existing authority in dealing with increased competition. The Legislative intent written into Section 364.338 suggests this:

> (1) . . . competitive offerings of certain types may under certain conditions be in the best interest of the people of the state. It is the Legislative intent that, where the Commission finds that a telecommunications service is effectively competitive, market conditions be allowed to set prices so long as predatory pricing is precluded, monopoly ratepayers be protected from paying excessive rates and charges, and both ratepayers and competitors be protected from regulated telecommunications services subsidizing competitive telecommunications services.

The Commission still has the authority that it always had to respond to increasing competition pursuant to its general ratemaking authority in Section 364.14. There is no express repeal or limitation of that authority in the revisions to Chapter 364. Thus, the Commission still may establish flexible pricing independent of the provisions of 364.338. Moreover, Section 364.338 is not a limit on the Commission's authority, it is a tool to be used by the Commission to further foster competition.

In the alternative portion of its Motion, FCTA asks that the Order be construed to require the LECs to justify the retention of CSA authority by first demonstrating that private line, special access and switched access services are subject to effective competition pursuant to Section 364.338(2)(a)-(g). FCTA's alternative request should also be denied for both substantive and procedural reasons. This request suffers from the same procedural and substantive flaws discussed above. Moreover, it is inappropriate to use reconsideration as a vehicle to insert an issue in a separate albeit related proceeding. If FCTA wishes to contest whether Private Line, Special Access and Switched Access services are effectively competitive, there are appropriate procedural vehicles to bring this before the Commission. A post-hearing motion for clarification is not the appropriate vehicle.

Accordingly, as discussed above, staff recommends that FCTA's Motion for Reconsideration/Clarification should be denied on both procedural and substantive grounds. There has been no showing of error or omission of fact or law.

ISSUE 9: Should the Commission reconsider its decision to require that mandatory collocation be implemented in a checker board pattern to provide for expansion of collocated facilities?

STAFF RECOMMENDATION: No. The Commission should not reconsider its decision to require that mandatory collocation be implemented in a checker board pattern to provide for expansion of collocated facilities. Although the Commission ordered mandatory virtual collocation instead of physical in Phase II of this docket, the checker boarding provision should still apply to virtual collocation arrangements as originally ordered in Phase I. If the local exchange company chooses to provide physical collocation, then the checker boarding provision should also apply as originally ordered.

In addition, since the Phase II Order did not specify when all LECs were to file revisions to their special access and private line tariffs, staff recommends that all local exchange companies file the appropriate revisions to their special access and private line expanded interconnection tariffs no later than 60 days after the Phase I Reconsideration Order becomes final. **[CHASE]**

STAFF ANALYSIS: In Order No. PSC-94-0285-FOF-TP ("Order" or "the Order") the Commission required the LECs to provide a checker board type of arrangement for physical and virtual collocation, if sufficient space is available. In the case of physical collocation, the checker board arrangement would have every other ten by ten square occupied by an interconnectors' collocation cage. This would allow an interconnector to expand to an area directly adjacent to its existing space, instead of across the room or to another floor. In the case of virtual collocation, the checker board arrangement would apply to the equipment rack. This would allow an interconnector to expand to a space in the equipment rack directly adjacent to its existing space. The rationale behind this type of arrangement is that it would prevent collocators from having to pay extra cabling charges if the equipment was spread out in the central office.

In the Phase II Order No. PSC-95-0034-FOF-TP, the Commission decided to implement a mandatory virtual collocation policy which is generally consistent with the FCC's decision because both interstate and intrastate traffic will be carried over the same facilities. The Commission further decided that this rationale should also be used to ensure the private line and special access expanded interconnection and the switched access expanded interconnection tariffs are consistent. Since the tariffs filed for private line and special access contain terms and conditions for mandatory physical collocation, the Commission ordered that they should be revised to remove the mandatory physical collocation requirements.

On March 25, 1994 Southern Bell filed a motion for reconsideration, clarification, and stay of Order No. PSC-0285-FOF-TP ("Order" or "the Order"). In its motion, Southern Bell requested that the Commission reconsider Section XIV. E. of the Order which requires interconnectors to be given space in the LEC central offices in a checker board arrangement in order to accommodate future expansion of their facilities. Southern Bell requested that the Commission withdraw the portion of the Order that mandates the checker board arrangement and allow the parties to submit testimony in the Phase II hearing on this issue. (Motion, p.7).

Southern Bell states that "the procedural order entered in this action prior to hearing did not identify any issue that called specifically for testimony regarding the expansion of collocated facilities. (Order No. PSC-93-1274-PHO-TL, August 1, 1993). Consistent with this, no party prefiled either direct or rebuttal testimony on this point." (Motion, p.5) Although this is true, staff believes the expansion of a collocator's space clearly falls under issue 13 outlined in the prehearing order. Issue 13 of the prehearing order is: "What standards should be established for the LECs to allocate space for collocators?" In addition, staff asserts that in proceedings such as this, there are usually sub-parts that are discussed in the context of an issue after the issuance of a prehearing order.

Southern Bell claims that the only evidence introduced at the hearing regarding expansion was approximately two pages of the hearing transcript (Motion, p.5). However, Intermedia's witness Canis discusses the expansion of space in his August 25, 1994 deposition (pp.28-31) which was admitted at the hearing as Exhibit 4. J. Phillip Carver and David M. Falgoust were present on behalf of Southern Bell at the deposition. In addition, Intermedia's witness Canis also discussed the checker board arrangement in response to staff's first set of interrogatories No. 9 which was also admitted into the record at the hearing. (EX 3, pp. 4-5) Therefore, staff believes that there was adequate time for Southern Bell to respond to Intermedia's testimony on this issue, and there is sufficient evidence in the record to support the Commission's decision requiring the checker board arrangement.

Southern Bell states further that allowing the checker board arrangement would appear to be in conflict with other portions of the Order because it effectively allows an interconnector to warehouse space for expansion without even paying to reserve the space. (Motion, p. 6) Staff believes that this is simply not true because in the event that the central office becomes filled to capacity, the "in-between spaces" would be available to any potential collocator. Therefore, the in-between spaces are not reserved for the current collocators. Even without the checker board requirement, it can be argued that any of the empty space in the central office is reserved for a current collocator until all of the space is exhausted.

On April 6, 1994, Intermedia Communications of Florida, Inc. (ICI) filed a response to Southern Bell's motion for reconsideration, clarification and stay of Order No. PSC-94-0285-FOF-TP. In the response, ICI argues that "Southern Bell raises no issue of fact or law that the Commission either overlooked or apprehended when it made its decision to require collocation in a checker board arrangement -- rather, it believes the Commission's decision is ill-advised." ICI believes that Southern Bell's motion does not raise sufficient grounds for reconsideration. (Response, p.2)

Staff recommends that the Commission deny Southern Bell's motion to reconsider the checker board expansion requirement. Staff believes that there is sufficient evidence in the record to support the checker board requirement. In addition, staff believes that the Phase II order, which changes the collocation requirement from mandatory physical to mandatory virtual, should have no effect on the checker board requirement because in the original order the checker boarding requirement was for both physical and virtual collocation. The checker boarding requirement should not change just because the mandate changed from physical to virtual.

Staff also believes that the checker board arrangement should not become a burden for the LEC because the requirement only applies where space is available. In addition, staff agrees with ICI that Southern Bell's motion does not raise sufficient grounds for reconsideration. Further, staff does not believe that the checker board requirement conflicts with the warehousing restrictions that were ordered in Section XIV. D of the Order.

In its tariff filing, Southern Bell omitted provisions regarding check board type arrangements, pending the outcome of it Motion for Reconsideration. Therefore, staff recommends that the Commission require Southern Bell to file the appropriate tariff provisions as required by Order No. PSC-94-0285-FOF-TP, when it files revisions to its special access and private line tariffs.

Since the Phase II Order did not specify when all LECs were to file revisions to their special access and private line tariffs, staff recommends that all local exchange companies file the appropriate revisions to their special access and private line expanded interconnection tariffs no later than 60 days after the Phase I Reconsideration Order becomes final. This is the same time frame the LECs have to file the switched access expanded interconnection tariffs, per Order No. PSC-95-0034-FOF-TP. The motion should be denied because there has been no error or omission of fact or law shown.

ISSUE 10: Should the Commission reconsider its decision regarding warehousing of space?

STAFF RECOMMENDATION: Yes. The Commission should reconsider a portion of its decision regarding the warehousing of space. Staff recommends that the Commission reconsider the time period that the LEC must give the interconnector to begin to use the space when the LEC chooses to provide physical collocation. An interconnector should begin to use the space within six months of the date the application is approved, or another time period agreed upon by the collocator and the LEC. In addition, the warehousing provisions should be contained in the LEC's special access, private line and switched access expanded interconnection tariffs where the LEC chooses to offer physical collocation. The remainder of Teleport's cross motion for reconsideration should be denied as being outside the record.

In addition, since the Phase II Order did not specify when all LECs were to file revisions to their special access and private line tariffs, staff recommends that all local exchange companies file the appropriate revisions to their special access and private line expanded interconnection tariffs no later than 60 days after the Phase I Reconsideration Order becomes final. **[CHASE]**

STAFF ANALYSIS: In the Phase I Order No. PSC-94-0285-FOF-TP (Order), the Commission allowed LECs to place restrictions on warehousing in their tariffs, such as the amount of time an interconnector is allowed before it must use the space. The time period must be at least 60 days. In addition, the Commission ordered the interconnectors to forfeit their space and collocation application fee if they do not use the space within the allotted time period specified in the tariff.

In the Phase II Order No. PSC-95-0034-FOF-TP, the Commission decided to implement a mandatory virtual collocation policy which is generally consistent with the FCC's decision because both interstate and intrastate traffic will be carried over the same facilities. The Commission further decided that this rationale should also be used to ensure the private line and special access expanded interconnection and the switched access expanded interconnection tariffs are consistent.

On April 6, 1994 Teleport Communications Group, Inc. (TCG) filed a cross motion for reconsideration and response to the motions for reconsideration and stay filed by Southern Bell. Specifically, TCG requests reconsideration of the warehousing provision in the Order.

TCG asserts that the warehousing restriction in the LEC tariffs mandating that an interconnector must use its designated collocation space within 60 days or forfeit the space and the application fee is unnecessary and unreasonable. (Motion, p. 2) TCG states that "the degree of the use of an interconnector's collocation space is of no concern to the LECs as long as the interconnector is paying for the space. A public interest issue arises only if all of the collocation space in a central office is exhausted and the LEC is efficiently using the rest of the space, thereby rendering other potential interconnectors incapable of securing space. Any restriction should become effective only at this point." (Motion, p.2)

TCG also argues that the sixty (60) day period is impractical and unfair because problems can be experienced in using a collocation space. TCG states that it has ordered collocation in California, but has not been able to use the space due to delays in construction and other problems. TCG also argues that "it may take more than 60 days for an interconnector to make a sale of services, coordinate the shift of services from the LEC to the collocator, and implement the new services." (Motion, p.3)

TCG believes that "the real LEC motivation behind these 'use it or lose it' requirements is the LEC's desire to force collocators to order cross connections so that pricing flexibility will be triggered. Collocators will have no alternative but to order useless LEC services from the LEC facility back into its own private office facilities so that the collocation space will be considered 'used' by the LEC." (Motion, p.3)

TCG also argues that the requirement will result in an unjust enrichment of the LEC. TCG states that "LECs charge extremely high construction charges for collocation -- $50,000 or more is typical. If they can evict customers under such circumstances, and then turn around and lease the same facility to another customer for another $50,000, they will receive a double recovery on their construction costs." (Motion, p.3) Conversely, TCG believes that if the LEC tears down the collocation space after it evicts the collocator, it will likely find itself rebuilding the collocation arrangement in the future which would be an inefficient use of its resources. (Motion, pp.3-4)

TCG requests the Commission reconsider its order implementing the warehousing restrictions. TCG asserts that, "if the Commission finds it necessary to implement a warehouse restriction, it should be limited to a situation in which a collocation space is not being used and there is an unmet demand for collocation space in that office that cannot be satisfied due to lack of space. In that situation, the LEC could require the initial collocator to turn its collocation space over to the waiting customer, who must be required to reimburse the collocator for the construction costs billed by the LEC." (Motion, p.4)

Staff agrees with TCG that the 60 days may be too short of a time frame for the collocator and the LEC to work out the arrangement and for the collocator to use the space. Staff recommends that the Commission reconsider the time period that the LEC must give the interconnector to begin to use the space. United/Centel testified to a 6 month time period in Exhibit 30, page 9. In addition, that is the time period restriction that United/Centel filed in its interstate tariffs with the FCC. Staff believes that some time period for the collocator to begin to use the space is necessary and that the Commission can settle disputes regarding when a collocator began to use its space if they arise. The Commission's Phase II Order No. PSC-95-0034-FOF-TP, which changed the collocation requirement from mandatory physical to mandatory virtual, should have no effect on this warehousing provision.

Staff believes that the remainder of TCG's arguments, which are outlined above, are new arguments that are not part of the record and therefore should not be considered in the reconsideration of this issue. Therefore, staff recommends that the Commission reconsider the time period that the LEC must give the interconnector to begin to use the space when the LEC chooses to offer physical collocation. An interconnector should begin to use the space within six months of the date the application is approved, or another time period agreed upon by the collocator and the LEC. In addition, the warehousing provisions should be contained in the LEC's special access and private line and switched access expanded interconnection tariffs where the LEC chooses to offer physical collocation.

Since the Phase II Order did not specify when all LECs were to file revisions to their special access and private line tariffs, staff recommends that all local exchange companies file the appropriate revisions to their special access and private line expanded interconnection tariffs no later than 60 days after the Phase I Reconsideration Order becomes final. This is the same time frame the LECs have to file the switched access expanded interconnection tariffs, per Order No. PSC-95-0034-FOF-TP.

ISSUE 11: Should the Commission grant Southern Bell's Motion for Stay of Order No. PSC-94-0285-FOF-TP?

RECOMMENDATION: No. Southern Bell's motion is rendered moot. By Order No. PSC-94-1102-FOF-TP, issued September 7, 1994, the Commission stayed the Phase I Order until a decision had been made regarding expanded interconnection for switched access services in Phase II. **[CANZANO]**

STAFF ANALYSIS: In its March 25, 1994 Motion, Southern Bell seeks a stay of Order No. PSC-94-0285-FOF-TP (Phase I Order). In the Order, the Commission directs the LECs to allow expanded interconnection for special access on the terms set forth in the Order. Southern Bell contends that this Order regarding collocation is unconstitutional. Accordingly, Southern Bell requests that the Commission stay the provisions of the Order regarding expanded interconnection until the Commission rules upon the Motion for Reconsideration. Southern Bell also requests a stay of the requirements of the Phase I Order to include in the tariffs provisions for checkerboarding, a "fresh look" policy to be applied to private line service, and the offering of interconnection at the DSO level. Southern Bell states that it intends to file these tariffs at the times required by the Order but requests that it be allowed to exclude from these tariffs those portions that are the subject of its motion for reconsideration. This is distinguished from GTEFL's Motion for Stay. GTEFL only requested a stay of the Order regarding the Commission's decision on the constitutionality of mandatory physical collocation.

By Order No. PSC-94-1102-FOF-TP, issued September 7, 1994, the Commission stayed the Phase I Order until a decision had been made regarding expanded interconnection for switched access services in Phase II. The Commission stated that the decisions regarding expanded interconnection in Phases I and II should be consistent. Therefore, Southern Bell's Motion for Stay is rendered moot.

ISSUE 12: Should this docket be closed?

RECOMMENDATION: No.

STAFF ANALYSIS: This docket should remain open pending resolution of any outstanding motions.

M E M O R A N D U M

August 31, 1995

TO:
- ____ DIVISION OF APPEALS
- ____ DIVISION OF AUDITING AND FINANCIAL ANALYSIS
- _XX_ DIVISION OF COMMUNICATIONS
- ____ DIVISION OF ELECTRIC AND GAS
- ____ DIVISION OF RESEARCH
- ____ DIVISION OF WATER AND WASTEWATER
- ____ DIVISION OF LEGAL SERVICES

FROM: DIVISION OF RECORDS AND REPORTING (WILLIAMS)

RE: CONFIDENTIALITY OF CERTAIN INFORMATION

DOCUMENT NO. 08538-95

DESCRIPTION: Certain information contained in Company's Zone Density Pricing Tariff.

SOURCE: GTE FLORIDA INCORPORATED

DOCKET NO.: 921074-TP

The above material was received with a request for confidentiality (attached). Please prepare a recommendation for the attorney assigned to the case by completing the section below and forwarding a copy of this memorandum, together with a brief memorandum supporting your recommendation, to the attorney. Copies of your recommendation should also be provided to the Division of Records and Reporting and to the Division of Appeals.

Please read each of the following and check if applicable.

___ The document(s) is (are), in fact, what the utility asserts it (them) to be.

___ The utility has provided enough details to perform a reasoned analysis of its request.