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Continental Cablevision - Southeastern Region

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ORIGINAL FILE COPY

November 27, 1995

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: DOCKET NO. 950985A-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are an original and fifteen copies of the Rebuttal Testimony of A.R. ("Dick") Schleiden on Behalf of Continental Cablevision, Inc. Copies have been served on the parties of record pursuant to the attached certificate of service.

Please acknowledge receipt and filing of these documents by date stamping the duplicate of this letter, which is enclosed, and returning it to me.

Thank you for your assistance with this filing.

Sincerely,

Donald L. Crosby

Donald L. Crosby

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cc: All Parties of Record

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REBUTTAL TESTIMONY OF A.R. (DICK) SCHLEIDEN
ON BEHALF OF CONTINENTAL CABLEVISION, INC.
DOCKET NO. 950985A-TP
NOVEMBER 27, 1995

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS AND IDENTIFY THE PARTY ON WHOSE BEHALF YOU ARE TESTIFYING.

A. A.R. (Dick) Schleiden, Continental Fiber Technologies, Inc. doing/business/as AlterNet, 4455 Baymeadows Road, Jacksonville, Florida. Continental Fiber Technologies, Inc. and Continental Florida Telecommunications, Inc. are wholly-owned subsidiaries of Continental Telecommunications Corporation, which is a wholly-owned subsidiary of Continental Cablevision, Inc. I am testifying on behalf of Continental Cablevision, Inc., and its affiliated companies operating in Florida.

Q. WHAT IS YOUR POSITION WITH ALTERNET?

A. I am the General Manager of AlterNet, which was originally certified as an alternative access vendor and is currently certified as an alternative local exchange telecommunications company.

Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS PROCEEDING?

A. Yes. I submitted direct testimony in this proceeding.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I will examine and rebut the testimony of the witness for BellSouth Telecommunications, Inc. ("BellSouth"), Mr. Robert C. Scheye.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. I take issue with two major areas of Mr. Scheye's testimony. First, it is improper to introduce into a proceeding dealing only with Continental's issues any understanding reached by BellSouth and a third party. In response to this portion of Mr. Scheye's testimony, I am compelled to point out that Continental has neither reached agreement with BellSouth on its own issues nor accepted any proposal made by BellSouth to a third party. Accordingly, the Commission should disregard all references in Mr. Scheye's testimony to any understanding between his company and a third party. Moreover, Mr. Scheye's frequent references to this extraneous understanding improperly introduces into this proceeding irrelevant issues, such as universal service, carrier-of-last-resort and number portability. This violates the letter of the law expressed in the recently-enacted legislation ("New Legislation"). Moreover, it ignores the Legislature's over-arching intent for the New Legislation that each of these major subjects be resolved independently. Therefore, my testimony will not address those issues which are improper for consideration in this proceeding. Rather, my testimony will concentrate on rebutting those issues raised in Mr. Scheye's testimony that are appropriate for consideration here. Secondly, Mr. Scheye's testimony incorrectly characterizes the "Bill and Keep" arrangement that I have recommended to the Commission for adoption in this proceeding. For the reasons set out below, I believe that his criticism either lacks foundation or misperceives my intended application of the "Bill and Keep" arrangement.

Q. SHOULD INTERCONNECTION BE PRICED TO COVER THE COSTS OF PROVIDING UNIVERSAL SERVICE AND CARRIER-OF-LAST-RESORT OBLIGATIONS?

A. No. Interconnection should be priced strictly in accordance with the Legislature's directives in the New Legislation. In a different proceeding, the Commission should carry out its statutory mandate to protect universal service, using the methods prescribed in the New Legislation which are entirely different than those established for setting interconnection rates. The Legislature obviously feared that these subjects could become confused if considered in the same proceeding and if similar methodology were employed, possibly leading to more support being provided for universal service than needed. As a result, the New Legislation carefully separates the subjects of interconnection, resale, universal service and number portability separate and keeps them independent of each other.

The Legislature intended for the Commission to hold different proceedings for interconnection and universal service, each with its own set of pricing directions, to implement the New Legislation. That statutory revision sets out one implementation schedule for the Commission to follow in its universal service proceeding and an entirely different one for number portability. Similarly, the list of concerns for the Commission to address in the universal service proceeding is different than that enacted for number portability. To bring this matter into starker contrast, the New Legislation goes so far as to compel the Commission to hold two separate proceedings on interconnection and resale, even to the point of mandating that the Commission make two separate decisions in these cases. This separate treatment of universal service and interconnection by the Legislature recognizes the "sea change" in the Commission's regulatory techniques that is accomplished by the New Legislation. Whereas the Commission traditionally employed ratesetting methods that include contributions in support of universal service, the New Legislature replaces this regulatory methodology with bifurcated treatment. I believe that, in its white paper entitled "Essential Elements of Local Telephone Competition," a copy of which is attached as Exhibit CONT-3, Sprint addresses best the legislative concern underlying this treatment. On page 2, Sprint states that interconnection compensation should not be a source of universal service subsidy and "should not be designed to produce contribution, sudsidies, or universal service support;".

The Legislature had a compelling reason of historical significance to follow this course. The Commission, the incumbent LECs and the IXCs recognized years ago a need to recover the costs for specific elements of various telecommunications services by tariffing their rates, terms and conditions individually, such as Directory Assistance. In my view, the majority of the participants in the Public Switched Network should now have the opportunity to freely structure their rates in accordance with their value to end users. This freedom should also be extended to the incumbent LECs as soon as the Commission detects that their current dominant monopoly market power has been met with effective competition and they no longer are the local loop "bottleneck."

Q. Must the Commission set rates for interconnection that are usage based and that depend on measuring and recording the calls exchanged by Continental and BellSouth?

A. No. The insistence by BellSouth that the rates for interconnection be priced on a measured and recorded usage basis, including the notion that some charge be established for the exchange of any unbalanced amount of traffic, is not supportable for several reasons. First, measured service leaves the opportunity for marketing incentives that may not be in the best interest of consumers and of the local exchange telecommunications companies, both alternative and incumbent, alike. It certainly does not appear to me to that such pricing would stimulate the kind of competitive activity that the Legislature envisioned in rewriting the law governing the regulation of telecommunications.

Second, other witnesses have submitted testimony in this proceeding alleging that the incumbent LECs lack the capability of measuring and recording terminating traffic in all of their Class 5 central offices, and I believe this to be the case. This being the case, it raises a host of technological issues that would likely delay choice in local service for most citizens of Florida.

Third, to diminish the cost of furnishing universal service to the public, cost must be driven out of the business. The development and installation of systems to process this terminating traffic data would drive up cost; thereby increasing prices to consumers and absolutely moving this industry in the wrong direction..

Fourth, any interconnection procedure relying upon measured service ultimately dictates that competition must look like the "traditional" monopoly. My recommendation is that the Commission establish interconnection arrangements that will force both incumbents and new entrants to look instead for innovative "new" competitive services that meet consumers needs. ALECs must be free to attract customers through offering services that meet customers' needs and not bound to "traditional" monopoly restrictions on service offerings.

Fifth, pricing interconnection strictly under a measured usage methodology flies in the face of the Legislature's clear mandate, found at Section 364.337(2), Florida Statutes (1995), that ALECs offer their end users a flat-rated pricing option for basic local service and not impose mandatory measured service.

Sixth, interconnections rates that rely on measuring and recording usage will lead to many confrontational issues between the parties. The Commission will have to called upon to preside over the resolution of such issues that occur. There is ample opportunity for abundant disagreement between the parties if the times recorded by all parties for traffic do not begin and end at precisely the same moments. I am led to wonder at the number and intensity of argumentative discussions that would evolve out of a single, faulty measuring and recording device.

For the above reasons, I have concluded that interconnection through reciprocal, mutual exchange of both local and toll traffic, at the proper levels, is the manner that will give Florida citizens the lowest possible telecommunications cost with the highest degree of flexibility and feature-rich innovation obtainable anywhere in the world. A "Bill and Keep" arrangement, which has gained the acceptance of regulatory agencies in Connecticut and California, is the logical choice for Florida.

Q. Do technical restrictions on interconnection exist that might favor one of the parties under a "Bill and Keep" arrangement?

A. In the event that a specific grade of service is either agreed to by the parties or ordered by the Commission, the answer is definitely "NO."

Q. Does that conclude your testimony?

A. Yes.

ESSENTIAL ELEMENTS OF LOCAL TELEPHONE COMPETITION

1. FRANCHISES AND ENTRY REQUIREMENTS

Federal, state or local restrictions that limit or prohibit competitors from offering a full range of local telephone services and regulatory requirements that unreasonably restrict market entry must be abolished. Specifically:

__No Exclusive Franchises__ -- No firm should have an exclusive franchise, license or certificate to provide local telephone service.

__No Need to Prove Existing Services are Inadequate__ -- No new market entrant should have to prove that the incumbent's service is inadequate as a prerequisite to offer competing local telephone service.

__No Discrimination Against New Market Entrants__ -- No laws or regulations should impose more onerous requirements on new market entrants than apply to incumbent telephone companies or discriminate against new market entrants. However, that does not mean that new market entrants should be subject to the same regulatory requirements as the incumbent local telephone company (see below).

__Equal Access to Rights of Way__ -- Any exclusive or preferential treatment of pole, conduit and rights-of-way of the incumbent local telephone company must be eliminated so that new entrants have access to those rights of way on the same rates, terms and conditions as the incumbent.

__No Unreasonable Requirements for Market Entry__ -- Entry into a local telephone market should not be artificially restricted by unreasonable requirements imposed on new market entrants (*e.g.*, requirements to offer facilities-based service to 100% of a given geographic area, excessive performance bonds, extended certification processes).

__Quid Pro Quos should not be a Condition of Market Entry__ -- Entry into a local telephone market should not be contingent on actions of the incumbent local telephone company or unreasonably delayed by lengthy, cumbersome regulatory proceedings concerned with ill-defined, open-ended issues (*e.g.*, no local competition authorized until and unless the incumbent local telephone company realigns its current rates, or no local competition until and unless a comprehensive universal service protection/subsidy replacement plan has been developed, debated and adopted by regulators).

2. INTERCONNECTION & COMPENSATION

Interconnection of local telephone networks at reasonable rates is critical to local telephone competition. Competing networks should be interconnected so that customers can seamlessly receive calls that originate on another carrier's network and place calls that terminate on another carrier's network without dialing extra digits, paying extra, or doing anything out of the ordinary. New market entrants should be interconnected with incumbent providers in a manner that gives them seamless integration into and use of local telephone company signalling and interoffice networks in a manner equivalent to that of the incumbent local telephone company.

Reasonable Compensation for Call Termination -- Mutual compensation for call termination should be set at a level that encourages the development of competition and interconnection while covering the associated costs. Compensation should:

- ***Be economically viable*** -- not set at a level that makes provision of competing local service uneconomic (*e.g.*, set at a level greater than the market price of local service);
- ***Be administratively efficient and minimize carrier conflicts*** -- structures that are simple and easy to verify (*e.g.*, flat rate charges);
- ***Create incentives for competitive infrastructure development*** -- reward greater investment in infrastructure development by local telephone company competitors;
- ***Minimize competitive distortions*** -- not discourage entry into all segments of the market;
- ***Not be a source of universal service subsidy*** -- should not be designed to produce contribution, subsidies, or universal service support;
- ***Promote competitive innovation*** -- not tied to existing local telephone company price structures so as to force new market entrants to mimic existing pricing structures; and,
- ***Not mirror existing access charges levels*** -- compensation based on current access charges will be uneconomic.

Uniform Standards and Administrative Interconnection -- Basic network functions must be provided in a nationally uniform manner, and conform to quality and interoperability standards. The incumbent must cooperate in ordering, billing, circuit provisioning, maintenance and repair.

Service Unbundling -- The incumbent local telephone company's services should reflect an unbundling of service components so that a new market entrant is not forced to purchase services that it does not want in order to obtain essential telecommunications capabilities. Unbundling should be performed in response to a *bona fide* request.

Collocation -- Collocation of facilities to achieve interconnection should reflect two characteristics:

- ***Collocation at aggregation points*** -- collocation should be made at the local telephone company's primary aggregation points (*e.g.*, tandems, central offices, serving wire centers); and,
- ***Physical or virtual*** -- collocation can either be physical collocation or virtual collocation that is economically and technically equivalent to physical collocation from the perspective of the interconnector.

3. NUMBERING RESOURCE ISSUES

Non-discriminatory access to numbering resources is critical. The following numbering resource issues are critical:

Access to Telephone Numbers -- New entrants should have non-discriminatory access to sufficient blocks of telephone numbers (*i.e.*, access to NXXs) to offer service.

Number Portability -- Customers must be able to change service providers and retain the same local telephone number at the same location (service provider number portability) without having to dial extra digits or be burdened by "special" actions in order to achieve number portability. Interim number portability mechanisms, such as remote call forwarding, are an inferior form of number portability that impairs a new market entrant's service, and such impairment should be reflected in interconnection charges.

Access to and Inclusion in DA, LIDB, AIN, 800 and Other Databases and Telephone Directories -- Competitive local service providers should be allowed to have their customers' telephone numbers included in telephone directories, directory assistance, LIDB, AIN, 800 and other databases and have access to such resources equal in price, functionality and quality as do incumbent local telephone providers.

Access to 911, TRS and Local Operator Services -- Competitive local service providers should have access to 911, relay services and operator services provided by the incumbent local telephone company on the same terms and conditions as enjoyed by the incumbent local telephone company.

Number Administration -- Numbering policy must be broadly developed and administered in a competitively neutral manner. The local exchange carrier must not be able to control the administration and assignment of numbering resources. NPA assignments must be handled in a neutral and non-discriminatory manner.

4. Universal Service Support & Embedded Subsidies

Competition and Universal Service. Local service competition enhances universal service. Competition for access services and competition in the local service market may well stimulate the development of new products, stimulate demand and produce higher revenues and earnings for the incumbent local telephone company just as competition in the interLATA long distance market did for AT&T.

Embedded Subsidies Should be Transitioned Away. In order to encourage efficient competition in all market segments, it is important to eliminate uneconomic/non-competitive subsidies embedded in telecommunications pricing structures over a reasonable transition period (*e.g.*, reduce access charges that are priced substantially above costs and raise those rates that are substantially below costs.)

Explicit Subsidies. Subsidies to preserve universal service should have the following characteristics:

> ***Explicitly Identified***. If subsidies are required, they should be explicitly identified rather than embedded in various prices;
>
> ***Needs Based Targeting***. If subsidies are required, they should be needs based either on a showing of low income by consumers or based on service to high cost areas;
>
> ***Broad-Based Support***. If subsidies are required, all telecommunications service providers should contribute to such subsidies in a competitively neutral manner based on their telecommunications revenues net of payments to intermediaries;
>
> ***Neutral Administration***. Collection and distribution of subsidies should be done by a neutral administrator;
>
> ***Only Basic Residential Telephone Service Subsidized***. Only basic residential telephone services should be subsidized, limited to (1) single party local service, (2) access to touch tone dialing, (3) access to carriers of choice, (4) access to operator services; and, (5) access to emergency (911) services.
>
> ***Competitive Access to Subsidies***. If subsidies are required, then all competitive local telephone service providers should have the opportunity to receive such subsidies when selected by an eligible customer.

5. REGULATION OF INCUMBENTS AND NEW MARKET ENTRANTS

Differential Regulation of Incumbents and New Market Entrants. As long as there is not parity in the marketplace, there should not be parity in regulation. Regulation of local telephone providers should be a function of market power as well as the incumbent telephone company's ability to leverage its control of essential facilities. As long as the incumbent local telephone provider possesses substantially more market power than new market entrants, it is appropriate to subject the incumbent to greater regulatory oversight.

Elimination of Rate Base Regulation. Traditional rate-base regulation should be abandoned and replaced with appropriately designed price and service regulation to provide the appropriate incentives as competition emerges. Traditional rate-base, rate of return regulation creates a regulatory predisposition to avoid actions that could affect the incumbent's revenues/earnings (*e.g.*, rules that prohibit competitive entry into local telephone markets) and seek out mechanisms to ensure revenue neutrality for the incumbent (*e.g.*, "make whole" compensation mechanisms in intraLATA toll markets to recover competitive revenue losses). Traditional rate-base regulation also contributes to uneconomic infrastructure investment incentives and discourages efficient pricing and cost reductions. Instead, appropriately styled price and service regulation, with pricing rules to transition rates to more efficient levels, enables local telephone companies to respond to emerging competition, and prevents cross-subsidization and abuse of market power.

Imputation In determining the price floor for their competitive services, incumbent local telephone companies should impute in the aggregate the same charges for essential network services and functionality as are paid by their competitors to them for the same services and functionality plus the costs of other services and functionalities actually used by the incumbent telephone company.

Resale & Sharing. Telecommunications services and functions should be provided without any restrictions on resale and sharing, provided that resale is of the same class of service (*e.g.*, should not be able to repackage and resell local residential services as business services).

Provider of Last Resort In a competitive market, there is no provider of last resort, only competitors, all seeking to provide services to customers. Because incumbent local telephone companies typically have universal coverage, even though competitors are entering the market, regulators should continue to restrict incumbent telephone companies from exiting markets or market segments until competitive alternatives become available (*i.e.*, being the carrier of last resort). However, restrictions on market exit should diminish as competition develops.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Rebuttal Testimony of A. R. "Dick" Schleiden on behalf of Continental Cablevision, Inc. were furnished by next day express delivery this 27th day of November, 1995, to the following:

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