FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

July 18, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CANZANO, EDMONDS)
DIVISION OF COMMUNICATIONS (CHASE, REITH, NORTON)

RE: DOCKET NO. 950985-TL - RESOLUTION OF PETITION(S) TO ESTABLISH NONDISCRIMINATORY RATES, TERMS, AND CONDITIONS FOR INTERCONNECTION INVOLVING LOCAL EXCHANGE COMPANIES AND ALTERNATIVE LOCAL EXCHANGE COMPANIES PURSUANT TO SECTION 364.162, FLORIDA STATUTES

AGENDA: JULY 30, 1996 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\950985B.RCM

CASE BACKGROUND

This matter came to hearing as a result of petitions for interconnections filed by Continental Cablevision, Inc. (Continental), Time Warner AxS of Florida, L.P., and Digital Media Partners (collectively Time Warner), and Metropolitan Fiber Systems of Florida, Inc. (MFS-FL). Continental and MFS-FL filed petitions against United Telephone Company of Florida (United) and Central Telephone Company of Florida (Centel). MFS-FL also filed a petition for interconnection against GTEFL. Time Warner filed a petition against United.

Section 364.16(3), Florida Statutes, requires each local exchange telecommunications company to provide interconnection with its facilities to any other provider of local exchange telecommunications services requesting such interconnection. Section 364.162, Florida Statutes, provides alternative local exchange companies 60 days to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions for interconnection. If a negotiated price is not established, either party may petition the Commission to establish non-discriminatory rates, terms, and conditions of interconnection.

By Order No. PSC-96-0668-FOF-TP (Order), issued May 20, 1996, the Commission decided various issues regarding rates, terms, and conditions for interconnection between the parties. On June 3, 1996 FCTA filed a motion for reconsideration of portions of the Order. On June 4, GTEFL and United/Centel filed motions for reconsideration of portions of the Order. Several of the other parties filed responses to FCTA's, GTEFL's, and United/Centel's motions for reconsideration. This recommendation addresses the relevant motions under each issue as set forth below.

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.

SUMMARY OF ISSUES

In Issue 1, staff recommends the Commission deny GTEFL's and United/Centel's motions for reconsideration regarding the Commission's decision on mutual traffic exchange as the local compensation arrangement. In Issue 2, staff recommends the Commission clarify its decision with respect to the establishment of criteria by which it will be determined whether traffic is imbalanced if and when a party petitions for establishment of a rate for local interconnection. In Issue 3, staff recommends the Commission deny GTEFL's motion for reconsideration regarding the level of the rate for LEC handling of intermediary traffic. In Issue 4, staff recommends the Commission deny United/Centel's motion for reconsideration regarding the toll default mechanism. However, staff recommends that the Commission, on its own motion, reconsider its decision as to whether originating or terminating access charges should apply for the toll default. In Issue 5, staff recommends the Commission clarify its decision to emphasize that LECs may charge for the facilities used when ALECs are collocated.

In Issue 6, staff recommends the Commission deny United/Centel's motion for reconsideration regarding the requirement of United/Centel to provide certain emergency

information. However, staff recommends the Commission grant United/Centel's motion for reconsideration with respect to the portion of the Order that requires United/Centel to utilize certain methods of backup routing of E911 calls. In Issue 7, staff recommends the Commission deny United/Centel's motion for reconsideration on the portion of the Order regarding white and yellow page directories. In Issue 8, staff recommends the Commission deny MCImetro's cross-motion for reconsideration on the portion of the Order that sets the time frame for GTEFL and United/Centel to file tariffs. However, staff recommends that the filing deadline should be changed to 30 days from the issuance of the reconsideration order as suggested by GTEFL. In Issue 9, staff recommends the Commission deny United/Centel's motion for reconsideration on the portion of the Order regarding the informational pages of the directory. In Issue 10, staff recommends that the docket remain open to address other information as required by Order No. psc-96-0668-FOF-TP.

ISSUE 1: Should the Commission grant GTEFL's and United/Centel's Motions for Reconsideration regarding the Commission's decision that for the termination of local traffic, the respective ALECs and GTEFL and United/Centel shall compensate each other by mutual traffic exchange?

RECOMMENDATION: No. GTEFL's and United/Centel's Motions for Reconsideration regarding the Commission's decision on mutual traffic exchange as a compensation arrangement should be denied. The motions do not raise a material and relevant point of fact or law which was overlooked or which the Commission failed to consider when it rendered the Order in the first instance.

STAFF ANALYSIS: In their motions filed on June 4, 1996, GTEFL and United/Centel request that the Commission reconsider its decision in Order No. PSC-96-0668-FOF-TL, issued May 20, 1996, (Order), to require GTEFL and MFS-FL, and United/Centel and MFS-FL, Time Warner and Continental to use mutual traffic exchange for the termination of local traffic between each other's networks. GTEFL and United/Centel argue that setting mutual traffic exchange as the mechanism for the exchange of local traffic violates both state and federal law.

A. GTEFL'S ASSERTION THAT THE COMMISSION MISINTERPRETS FLORIDA LAW BY FAILING TO IMPOSE AN INTERCONNECTION CHARGE

GTEFL asserts that under mutual traffic exchange, neither GTEFL nor MFS-FL will pay the other anything for terminating calls originated by the customers of the other carrier. GTEFL contends that no charges for local interconnection are imposed on either interconnecting party. GTEFL once again raises the argument that Section 364.162(4), Florida Statutes, mandates the Commission to establish a charge for local interconnection. GTEFL points out that references to "rates" and "prices" are made in this subsection.

GTEFL states that when a statute is clear and unambiguous, it must be afforded its plain and obvious meaning. See Streeter v. Sullivan, 509 So.2d 268 (Fla. 1987). GTEFL also points out that under Florida law, plain and ordinary meaning of words in a statute can be ascertained by reference to a dictionary. See Green v. State, 604 So.2d 471, 473 (Fla. 1992). GTEFL states that "charge" means the "price set or asked" as set forth in Webster's II New Riverside University Dictionary, 249 (1984). Also, GTEFL states that Webster's defines "rate" to be a "cost per unit of a service or commodity" or a "charge or payment calculated by means of a particular ratio, scale or standard." Id at 975. GTEFL argues that by requiring mutual traffic exchange, the Commission has

included "in-kind" exchange or bartering as forms of compensation within these definitions and deviates from their plain and common meaning. GTEFL thus contends that as a matter of law, the Order does not comply with Florida law.

MCImetro and MFS-FL contend that GTEFL's analysis misses the mark. Section 364.162 uses three terms interchangeably to refer to the compensation mechanism for local interconnection - price, rate, and charge. Staff agrees with MCImetro and MFS-FL's analysis that GTEFL stopped its dictionary analysis too soon. GTEFL's dictionary analysis focuses only on the term "charge" which is defined as "price." The term "price," which is then used in the statute as well as in the dictionary definitions of both "charge" and "rate," is defined as "the quantity of one thing that is demanded in barter or sale for another." Webster's Ninth New Collegiate Dictionary, 933 (9th ed. 1991). While the "thing" demanded in "barter" may be money, it does not have to be. Similarly, Black's defines price to be "[t]he consideration given for the purchase of a thing." Black's Law Dictionary, 1188 (7th ed. 1990). "Price" is also defined as "the sum of money or goods asked or given for something. The American Heritage dictionary of the English Language, at 226 (6th Ed., 1976)

The Commission considered and rejected a similar dictionary definition-based argument raised by United-Centel. See Order, page 18. Staff believes that based on the plain language of Section 364.162, the Commission is not precluded from establishing mutual traffic exchange as the mechanism for charging for local interconnection. Accordingly, GTEFL has not raised a material and relevant point of fact or law that was overlooked or which the Commission failed to consider when it rendered the portion of its order establishing mutual traffic exchange as a mechanism for implementing local interconnection.

B. GTEFL'S ASSERTION THAT THE EVIDENCE DOES NOT SUPPORT THE FINDING THAT MUTUAL TRAFFIC EXCHANGE WILL BE SUFFICIENT TO RECOVER COSTS OF INTERCONNECTION

GTEFL contends that by ordering a mutual traffic exchange mechanism, the Commission failed to set a charge that is sufficient to cover the cost of furnishing interconnection as required by Section 364.162(3), Florida Statutes. GTEFL states that the Commission acknowledges that a mutual traffic exchange approach will not recover one party's costs of interconnection if the relative amount of traffic terminated is sufficiently out of balance that it exceeds the transaction costs of billing on a per minute of use basis. However, GTEFL contends that the Commission admits that the evidence relating to the question of whether

traffic will be balanced is lacking. GTEFL states that the only empirical evidence introduced was that traffic would be out of balance. GTEFL argues that although finding that it is highly speculative to predict whether traffic will be balanced, the Commission still ordered mutual traffic exchange.

GTEFL asserts that there must be substantial evidence proving that traffic will be balanced. Further, GTEFL states that the Commission's order cannot be based upon speculation or supposition.

GTEFL acknowledges that the Commission has afforded MFS-FL and GTEFL the opportunity to file a petition to change the mutual traffic exchange mechanism if either believes that the traffic is imbalanced to the point that it is not receiving benefits equivalent to those it is providing through mutual traffic exchange. GTEFL states that filing a subsequent petition does not cure the legal deficiencies with the Commission's decision. GTEFL states that it would have to measure minutes of local traffic termination and the Commission affords it no opportunity to recover those costs to which it is entitled, and the Commission has not implemented any type of true-up mechanism to permit the recovery of any shortfalls created by the mutual traffic exchange arrangement. Therefore, GTEFL argues that Commission's finding that no evidence exists on whether traffic is balanced compels adoption of GTEFL's proposed Originating Responsibility Plan (OPR) compensation plan.

MCImetro asserts that the use of mutual traffic exchange enables GTEFL to recover its cost of providing local interconnection. MCImetro states that the Commission relied on witnesses Cornell's and Wood's testimony that mutual traffic exchange provides compensation "in kind" which is sufficient in economic terms to cover GTEFL's cost of providing interconnection. MCImetro states that GTEFL's argument ignores the fact that GTEFL is avoiding the payment of cash compensation, and those avoided cash payments remain with GTEFL to cover its costs of providing interconnection. MCImetro asserts that in economic terms, GTEFL covers its costs of interconnection just as surely through mutual traffic exchange as it would through its preferred alternative of mutual cash exchange.

MCImetro, MFS-FL and AT&T contest GTEFL's argument that the evidence does not support the Commission's finding that traffic will be sufficiently balanced for mutual traffic exchange to ensure that each carrier recover its cost of providing interconnection. This is nothing but an argument about the weight of the evidence. Since there is not yet any experience with local interconnection in Florida, it is impossible to say with certainty whether traffic will be balanced. Staff believes that the Commission weighed

competing testimony and evidence and concluded that it was likely that traffic would be sufficiently balanced to justify using mutual traffic exchange, especially when other advantages were factored into the consideration, such as additional measurement and billing costs if another method were used. GTEFL merely differs with the Commission about the weight of the evidence, which is not grounds for reconsideration.

Further, as MCImetro points out, the Commission established a "safety valve" which allows any carrier to request that the compensation mechanism be changed upon a showing that traffic in fact is imbalanced to the point that it precludes a carrier from recovering its costs.

The Commission has already considered and rejected GTEFL's argument. Staff believes that the Commission's decision regarding mutual traffic exchange does not violate Section 364.162, Florida Statutes. Accordingly, GTEFL has not raised a material and relevant point of fact or law that was overlooked or which the Commission failed to consider when it rendered the portion of its order establishing mutual traffic exchange as a mechanism for implementing local interconnection.

C. GTEFL'S ASSERTION THAT THE EVIDENCE DOES NOT SUPPORT THE FINDING THAT COSTS OF MEASUREMENT AND BILLING ARE EXCESSIVE

GTEFL states that the Commission concluded that the expense to measure and bill local terminating traffic would be significant and that this expense would be avoided under mutual traffic exchange. GTEFL contends that this conclusion is not based upon competent substantial evidence and argues that the Commission ignored evidence presented by GTEFL that the costs of measurement will not be avoided under mutual traffic exchange arrangements. Further, GTEFL argues that the Commission failed to address the specific cost numbers introduced by GTEFL showing that the cost of measurement and billing would be minuscule.

MCImetro responds that there is ample evidence in the record to support the Commission's finding that there is a significant expense to measuring terminating local traffic and that this expense is avoided by the use of mutual traffic exchange. Further, MCImetro states that while GTEFL presented some evidence to support its claim that the cost of measurement and billing would be minuscule, that evidence went to the cost of measuring total minutes of terminating traffic not to the additional cost of identifying which of those minutes represent local traffic and the cost of billing those local minutes.

Also, MCImetro adds that there is other evidence that shows that the LECs, including GTEFL, do not have the capability to separate terminating local usage from terminating toll usage, that the cost to install the capability to separate such traffic is significant, and that the transaction cost of attempting to measure, identify and bill terminating local usage is likely to substantially outweigh the benefits unless traffic is significantly out of balance. This and other evidence was provided on pages 31 and 32 of the staff recommendation and was considered by the Commission.

Accordingly, staff believes that this is merely an argument about the weight of the evidence, which is not properly before the Commission on reconsideration. The Commission considered the evidence and arguments as noted on pages 15 through 17 of the Order. Accordingly, GTEFL has not raised a material and relevant point of fact or law that was overlooked or which the Commission failed to consider when it rendered the portion of its order regarding the costs of measurement and billing local terminating traffic.

D. GTEFL'S ASSERTION THAT MUTUAL TRAFFIC EXCHANGE IS DISCRIMINATORY

GTEFL states that in May, the Commission approved an interconnection agreement between GTEFL and Intermedia Communications, Inc. of Florida (ICI). That decision established a reciprocal compensation mechanism under which the companies will pay each other GTEFL's terminating switched access rates, less the otherwise applicable residual interconnection charge and common carrier line elements, on a per-minute-of-use basis. On an interim basis, ICI and GTEFL will not be required to compensate each other for more than up to 105% of the total minutes of use of the provider with the lower of minutes of use in a particular month. The Commission approved this same compensation arrangement for a negotiated agreement between BellSouth and certain ALECs. See Order No. PSC-96-0082-AS-TP, issued January 17, 1996.

GTEFL contends that the Order at issue establishes mutual traffic exchange under which GTEFL assesses no charges as between GTEFL and MFS-FL. This means that GTEFL will assess interconnection payments for one co-carrier (and vice versa) while carrying another co-carrier's traffic without payment. GTEFL contends that different rates will apply to carriers taking the same local call termination service. GTEFL states that this type of discriminatory rate structure would be permissible only if there were some legitimate distinction between the customers to which the different rates apply. In its motion, GTEFL argues that the

Commission is obliged to eliminate the impermissible discrimination wrought by the Order and find that the initially approved interconnection rates as between ICI and GTEFL will apply to interconnection between MFS-FL and GTEFL as well.

Contrary to GTEFL's assertion, staff points out that the Commission decided the issues in this docket at the agenda conference held on April 16, 1996, after holding an evidentiary proceeding. The final order was issued on May 20, 1996. However, the Commission did not approve the GTEFL/ICI agreement until the agenda conference held on May 21, 1996. In fact, that decision was issued as a proposed agency action order on June 17, 1996 and was not a final order until 21 days later. See Order No. PSC-96-0784-FOF-TP. Accordingly, the Commission's first decision to establish interconnection rates with GTEFL is in this docket with MFS-FL.

Further, Section 364.162, Florida Statutes, establishes a two part procedure for establishing provisions for local interconnection. Specifically, parties may negotiate or if negotiations fail, may petition the Commission to establish such nondiscriminatory rates, terms, and conditions of interconnection.

To adopt GTEFL's construction would render an absurd result. The first time rates, terms and conditions of interconnection are set by the Commission, either by approval of a negotiated agreement or by arbitration, then those rates, terms, and conditions would govern any subsequent agreement or arbitration. However, the plain language of the statute contemplates several sets of negotiations or hearings between parties. Section 364.162 does not compel all ALECs to be signatories to an agreement just because a few ALECs were the first to have a Commission approved rate, nor does the law prohibit others from negotiating a different nondiscriminatory rate. In fact, Section 364.162 grants ALECs, such as MFS-FL, the right to have the Commission set the provisions of interconnection if negotiations fail.

Also, the Commission ordered the implementation of mutual traffic exchange between GTEFL and MFS-FL and required GTEFL to file a tariff regarding its interconnection rate and other arrangements. Thus, these rates should be available to all, thereby eliminating the possible claim of discrimination.

Accordingly, staff believes that the this argument regarding discrimination should be denied. GTEFL has not raised a material and relevant point of fact or law that was overlooked or which the Commission failed to consider when it rendered the portion of its order regarding the mutual traffic exchange.

E. GTEFL'S ASSERTION THAT MUTUAL TRAFFIC EXCHANGE VIOLATES THE TAKINGS CLAUSE UNDER THE UNITED STATES AND FLORIDA CONSTITUTIONS

GTEFL states that the Commission's Order violated the Fifth and Fourteenth Amendments to the United States Constitution, as well as the Florida Constitution, Article 1, Section 9, that proscribes confiscation of GTEFL's property without just compensation. GTEFL states it unquestionably has property rights in the switches, loops, and transmission wire that make up its local telephone infrastructure. To the extent that the government requires GTEFL to allow third parties to occupy GTEFL's property through the transmission of competitors' signals, the government significantly impinges upon each of these rights.

GTEFL also argues that mandatory interconnection by definition provides physical access to its tangible property. GTEFL states that interconnection allows MFS-FL to move its traffic over GTEFL's network which is then physically invaded by the bits and bytes transmitted by MFS-FL. Moreover, GTEFL contends that it will be required to make investments in physical property to accommodate such traffic and to devote measurable network capacity to the carriage of this traffic. GTEFL contends that property in GTEFL's switching office and transport network is occupied by MFS-FL or other ALEC-originated traffic, thereby denying it the use of this property to serve its own customers. GTEFL argues that despite this physical intrusion, the Commission's mutual traffic exchange requirement provides GTEFL with no compensation.

GTEFL asserts that neither the Commission nor any other governmental agency is permitted to impose confiscatory rates on one line of a company's business simply because the company can theoretically afford those losses by generating additional revenue on other lines of business. Such a notion, GTEFL argues, would permit the government to impose below-cost pricing on any profitable company. GTEFL argues that mandatory below-cost pricing on a particular line of business is unconstitutional even if the company is able to make up those losses from revenues generated from other businesses and cites to the following case for support. Brooks-Scanlon Co. v Railroad Commission, 251 U.S. 396 (1920).

GTEFL relies on Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982), for the proposition that the appropriate compensation for this physical taking is to compensate the property owner for the full opportunity cost of the physical invasion.

A similar argument was raised by the LECs when the Commission ordered mandatory physical collocation in Phase I of the expanded

interconnection docket. See Order Nos. PSC-94-0285-FOF-TP, issued March 10, 1994. The Commission stayed the order when the FCC ordered mandatory virtual rather than physical collocation. See Order No. PSC-94-1102, FOF-TP, issued September 7, 1994. In that order, the Commission was persuaded by the argument that property dedicated for the public purpose is subject to a different standard when, pursuant to statutory authorization, a regulatory body mandates certain uses of that property in the furtherance of its dedicated use. The Commission was not persuaded by the LECs' argument that a mandatory physical occupation is a per se taking.

In this instant case, the statutory authorization is provided by Chapter 364, Florida Statutes. Staff believes that effective interconnection and the adequate provision of telecommunications service require that the Commission mandate interconnection and such purposes do not turn statutorily authorized regulation into a taking.

Property interests are not created by the Constitution, but rather are delineated by existing rules or understandings that stem from an independent source such as state law. Ruckelshaus v. Mansanto Co., 467 U. S. 986, 1000 (1984) citing Webb's Fabulous Pharmacies, Inc v. Beckwith, 449 U.S. 155, 161 (1980).

Under Sections 364.16 and 364.162, Florida Statutes, the LEC is required to provide interconnection with its telecommunications facilities to any other provider of local exchange telecommunications services requesting such interconnection at nondiscriminatory rates, terms and conditions. If the parties cannot negotiate an agreement, then the Commission's obligation is to set interconnection rates that are not below cost. The Commission is also obligated by statute to ensure that the rate must not be set so high that it would serve as a barrier to competition. Further, staff believes that the mutual traffic exchange arrangement established by the Commission meets the statutory guidelines as discussed previously.

Loretto is relied upon by GTEFL as authority for the taking analysis based upon an ad hoc factual inquiry of:

1. The economic impact of the regulation;
2. The extent to which it interferes with investment-backed expectations; and
3. The character of the governmental action.

Loretto is also relied upon for the proposition that a permanent physical occupation represents a per se taking and that

an ad hoc inquiry is only reached in the absence of such a permanent physical occupation. In Loretto, the Court stated:

> We affirm the traditional rule that a permanent physical occupation of property is a taking. In such a case, the property owner entertains a historically rooted expectation of compensation, and the character of the invasion is qualitatively more intrusive than perhaps any other category of property regulation. Id. at 441

The Commission previously found that an objective reading of Loretto is that if there is a permanent physical occupation there is a taking. This is the case regardless of the size of the occupation. In Loretto, the permanent occupation was the attachment of wires and a box to the exterior of a building.

GTEFL contends that it must be compensated for the full opportunity cost of the physical invasion of its private property. Staff believes that Loretto is not the appropriate standard to employ regarding the Commission's statutorily authorized regulation of the LEC's property. Staff contends that Loretto involved neither the taking of a common carrier's property nor government regulation of a common carrier. This distinction is central to any taking analysis.

> A lawful governmental regulation of the service of common carriers, though it may be a burden, is not a violation of constitutional rights to acquire, possess, and protect property, to due process of law, and to equal protection of the laws, since those who devote their property to the uses of a common carrier do so subject to the right of governmental regulation in the interest of the common welfare. . . . Even where a particular regulation causes a pecuniary loss to the carrier, if it is reasonable with reference to the just demands of the public to be affected by it, and it does not arbitrarily impose an unreasonable burden upon the carrier, the regulation will not be a taking of property, in violation of the Constitution. State ex rel. Railroad Com'rs v. Florida East Coast Ry. Co., 49 So. 43-44 (Fla. 1909) (Emphasis added).

Staff believes that it has long been established that property which has been dedicated to a public purpose can be regulated and even permanently physically occupied as long as the regulation involves the dedicated public purpose. See Munn v. Illinois, 94 U.S. 113, 126 (1876). Under this analysis, the taking issue is not reached except to the extent that there is inadequate compensation

for the use of the property or a mandate to use the property in a manner to which it has not been dedicated; neither case is present here.

Staff believes that while the Commission cannot determine the appropriate compensation for a taking, it certainly has the authority to establish the appropriate rates for the provision of telecommunications service in Florida. Provided that the rates are not confiscatory, staff believes that the Commission has the statutory authority to establish nondiscriminatory rates, terms, and conditions for interconnection. As discussed previously, staff believes that the Commission's establishment of mutual traffic exchange as a compensation arrangement provides that GTEFL will be compensated for its provision of interconnection services.

Accordingly, staff believes that the GTEFL's argument regarding an impermissible taking should be denied. GTEFL has not raised a material and relevant point of fact or law that was overlooked or which the Commission failed to consider when it rendered the portion of its order regarding the mutual traffic exchange.

F. GTEFL'S ASSERTION THAT THE COMMISSION FAILED TO CONSIDER GTEFL'S INTERESTS

GTEFL contends that the Commission has prejudged GTEFL and United/Centel by assuming that any mechanism other than mutual traffic exchange would be more likely to lead to anti-competitive behavior. Specifically, GTEFL argues that the record was devoid of evidence that either GTEFL or United/Centel would use an ORP to impose barriers to entry and that the costs of interconnection introduced by GTEFL or United/Centel were unnecessary or anti-competitive.

Staff believes that GTEFL merely disagrees with the Commission's subsidiary findings which support the Commission's overall decision to require mutual traffic exchange.

GTEFL also claims that the Commission has disregarded its statutory mandate in Section 364.01(4)(g), Florida Statutes, to ensure all providers of telecommunications services are treated fairly. Also, GTEFL states that it is not fair to force GTEFL to subsidize the market entry of MFS-FL and other ALECs. To the extent that GTEFL does not recover its costs in furnishing interconnection, it must recover them through local rates and other services ordered by GTEFL's customers.

Staff believes that GTEFL's argument that it is subsidizing the market entry of the ALECs is simply another attempt to rehash the argument that mutual traffic exchange does not enable the LEC to cover its costs.

Accordingly, staff recommends that GTEFL's motion for reconsideration regarding market subsidy of ALECs be denied. GTEFL has not raised a material and relevant point of fact or law that was overlooked or which the Commission failed to consider when it rendered the portion of its order regarding the mutual traffic exchange.

G. UNITED/CENTEL'S ASSERTION THAT MUTUAL TRAFFIC EXCHANGE VIOLATES THE TELECOMMUNICATIONS ACT OF 1996

The decision in this proceeding was made after the Federal Telecommunications Act of 1996 (Act) was signed into law on February 8, 1996. The Commission has acted in accordance with its obligations under Section 364.162, Florida Statutes.

United/Centel argues that state commissions are not authorized under Section 252(d)(2) of the Act to impose mutual traffic exchange mechanisms as a permanent resolution of failed negotiations in the absence of competent substantial evidence that it is a reasonable approximation of the parties' costs. United/Centel asserts that to impose any interconnection arrangement where the costs of transport and termination are unknown, the commission must do so as an interim measure to give it time to consider the additional costs to be incurred by the LEC and the interconnecting ALEC. Also, United/Centel contends that the "safety valve" of requiring the parties to petition the commission for a change when they believe the traffic is imbalanced is insufficient under the Act. Instead, United/Centel contends that the Order must limit the imposition of mutual traffic exchange to a period necessary to develop a reasonable approximation of the additional cost of terminating local calls.

Section 252(d)(2)(A) provides the general rule that governs state commission approval of reciprocal compensation arrangements. Specifically, this section states:

> (A) IN GENERAL. - For purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless -

> (i) such terms and conditions provide for the mutual and reciprocal recovery of by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of reasonable approximation of additional costs of terminating such calls.

Section 252(d)(2)(A) applies regardless of whether the arrangements have been established by the parties through a voluntary agreement under Section 252(a) or through action by a state commission under Section 252(b).

> Section 252(d)(2)(B) provides:
>
> (B) RULES OF CONSTRUCTION. - This paragraph shall not be construed -
>
> (i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)

Staff believes that while Section 252(d)(2)(B)(i) does not require a state commission to adopt mutual traffic exchange, it clearly authorizes it to do so. The Act expressly recognizes that the offsetting of reciprocal obligations, whether through bill-and-keep or mutual traffic exchange, is a permissible method of cost recovery. Nothing in the Act states that the rules of construction apply only to voluntarily negotiated compensation mechanisms, and that the Commission would have less latitude than the parties would have to establish an appropriate compensation policy.

MFS-FL and AT&T state that Section 252 does not require the Commission to set a time limit on the applicability of mutual traffic exchange. The Commission is within its authority to order mutual traffic exchange as either a temporary or a permanent basis. Staff agrees with their analysis.

United/Centel also argues that the ALECs' costs of providing local transport and termination are at least approximate to its costs. There is no requirement in the Order that the ALECs submit cost support for local interconnection. United/Centel argues that this is inconsistent with the Act until the Commission finds that the ALECs' costs are presumptively equal to United/Centel's costs.

United/Centel requests that the Order be reconsidered to make it consistent with the requirements of the Act.

MCImetro asserts that United/Centel's contention that the Commission's safety valve is insufficient to ensure that United/Centel is compensated based on a "reasonable approximation of costs" must fail. The Commission has held that so long as traffic is balanced, mutual traffic exchange enables all parties to recover their costs. Mutual traffic exchange would fail to recover such costs only if traffic was persistently out of balance by more than a de minimis amount. This is precisely the situation in which any party can seek to make the requisite showing to trigger the payment of cash compensation. AT&T adds that mutual traffic exchange is itself a reasonable approximation of the cost of terminating calls as contemplated in Section 252(d)(2)(A)(ii).

Staff believes that the Commission's decision regarding mutual traffic exchange does not violate the Federal Telecommunications Act of 1996. Its decision was based on Chapter 364, Florida Statutes, and is consistent with the provisions of the Act. Accordingly, United/Centel has not raised a material and relevant point of fact or law that was overlooked or which the Commission failed to consider when it rendered the portion of its order establishing mutual traffic exchange as a mechanism for implementing local interconnection.

ISSUE 2: Should the Motions for Reconsideration of FCTA, Time Warner, and Continental with respect to the establishment of criteria by which it will be determined whether traffic is imbalanced if and when a party petitions for establishment of a rate for local interconnection, be granted?

RECOMMENDATION: The Commission's Order should be clarified. The language beginning with the second sentence of the first paragraph of Section (g) should be replaced with the following:

> In the event that one or the other party determines that traffic is unbalanced to the point that the benefits of Mutual Traffic Exchange are not comparable for both parties, and if they are unable to agree on a mechanism for compensation among themselves, one or the other may seek resolution by the Commission. The Commission will wish to verify assertions of traffic imbalance by the petitioning party as quickly as possible given the 120 day statutory limit upon which to make a ruling. The following criteria should serve as guidelines in helping that party to develop information to support its petition to the Commission. The Commission will wish to review, among other things,
>
> * terminating local traffic data which reflects the trends in the flow of traffic;
>
> * some evidence showing the negative impact, financial or otherwise, that the traffic imbalance has caused and will continue to cause;
>
> * some estimates of the costs which would be incurred due to the additional processing and software required to measure, record and bill local usage.

Also, the Commission may clarify that it is not endorsing a 105% or any other type of cap on compensation for traffic imbalance in this order.

STAFF ANALYSIS: FCTA, Time Warner, and Continental filed motions for reconsideration of the Commission's decision with respect to establishing information requirements should a party request that the compensation mechanism be changed to a specified rate. In support of its motion, FCTA argues: 1) that the Commission need not establish now the criteria by which it will judge any future petitions to change the terms of interconnection; 2) that the

"standards" in the order are inconsistent with the Commission's findings and the record evidence; 3) that by requiring ALECs to provide traffic data, the Commission has overlooked or failed to consider that ALECs would have to develop the tracking and billing systems that mutual traffic exchange is designed to obviate; 4) that standard 2 in the order is ambiguous and could create competitive disincentives by requiring that parties quantify the "financial impact" due to any traffic imbalance; and 5) that the order appears to set up standards independent from Section 364.162(7), Florida Statutes (F.S.), the provision that governs future petitions. FCTA states that the "standards" are too restrictive in that they do not provide for "changed circumstances" in the future, and they should, at minimum, be revised. FCTA also requests a clarification that the Commission does not intend to make any determination as to whether the Intermedia 105% cap on traffic imbalance, or any other cap, is appropriate if and when a usage-based local interconnection rate is established.

Time Warner also argued that the potential requirement that a new entrant would be required to respond to a LEC complaint and provide such data, would mean that the new entrant must track the three elements of data from the beginning of the exchange of local traffic. This would inflate the costs for new entrants. Time Warner states that this cannot be the intention of the Commission and requests reconsideration.

Continental argues that the Commission's action violates the Administrative Procedures Act (APA), Chapter 120, F.S., by establishing a procedure that is not based on record evidence. Continental proposes that the Commission hold another "discrete" hearing where parties may assert "any right under federal or state law" to further adjudicate this issue. Continental asks that the Commission delete the portion of the order that establishes a procedure for requesting a change in the mutual traffic exchange compensation arrangement.

United/Centel filed a response to the Motions of Time Warner and FCTA, stating that the record "amply supports" imposition of measurement requirements.

Staff agrees with the ALECs that the Commission's decision to implement Mutual Traffic Exchange was based in part on the efficiencies inherent in <u>not</u> having to record, measure and bill local usage. The order, as worded, however, would seem to require that each ALEC must nevertheless do exactly that, even if some <u>other</u> party petitions the Commission to change the pricing mechanism. The <u>petitioning party</u> should be required to make the

initial showing of traffic imbalance. Staff recommends that the Commission clarify the order to that end.

Presumably, a local carrier will not petition the Commission for a change in the compensation mechanism unless it has good reason to believe that it is being harmed and is also unable to come to terms with the other carrier(s). The Commission has the right to expect a verifiable demonstration of the extent of any imbalance and the degree of harm. Thus, the information list in the order should be viewed as a set of guidelines, rather than "standards." A potential petitioning party who plans to argue that traffic is imbalanced to the point where it is not receiving benefits commensurate with those which it is providing, will be able to use the guidelines listed to determine what information the Commission will consider relevant in making a determination.

Parties should not presume that the Commission will consider itself either limited to or by the information identified in its order. FCTA argues that the language in Section 364.162(7) already sets forth "a full statutory scheme" for changing interconnection rates and terms. Staff would note that the same provision requires the Commission to make, within 120 days, a specific set of post-hearing findings, one of which is that there has been a "compelling showing of changed circumstances." Knowing ahead of time at least some of the information which the Commission will deem relevant to a "showing of changed circumstances" should be welcome to the parties. Staff disagrees with the ALECs that including relevant information needs in the order violates any part of the statute, including the Administrative Procedures Act.

The Commission's Order should be clarified. The language beginning with the second sentence of the first paragraph of Section (g) should be replaced with the following:

> In the event that one or the other party determines that traffic is unbalanced to the point that the benefits of Mutual Traffic Exchange are not comparable for both parties, and if they are unable to agree on a mechanism for compensation among themselves, one or the other may seek resolution by the Commission. The Commission will wish to verify assertions of traffic imbalance by the petitioning party as quickly as possible given the 120 day statutory limit upon which to make a ruling. The following criteria should serve as guidelines in helping that party to develop information to support its petition to the Commission. The Commission will wish to review, among other things,

* terminating local traffic data which reflects the trends in the flow of traffic for a reasonable period of time;

* reasonable evidence showing the negative impact, financial or otherwise, that the traffic imbalance has caused and will likely continue to cause;

* reasonable estimates of the costs which would be incurred due to the additional processing and software required to measure, record and bill local usage.

Finally, FCTA requests clarification that the Commission did not intend the order to make any determination with respect to whether the Intermedia 105% cap on traffic imbalance, or any other cap, is appropriate if and when a usage-sensitive local interconnection rate is ordered. Staff believes that this is entirely unnecessary. It is clear in the order that the Commission was not making any sort of prejudgment, but was simply demonstrating the inconsistency of the LECs' positions between their Intermedia agreements and this proceeding with respect to their concern over potential cost recovery. But if the Commission is so inclined, it may reassure FCTA that it was not endorsing a 105% or any other type of cap on compensation for traffic imbalance.

ISSUE 3: Should the Motion for Reconsideration of GTEFL with respect to the level of the rate for LEC handling of intermediary traffic, be granted?

RECOMMENDATION: No, GTEFL's motion for reconsideration on this point should be denied.

STAFF ANALYSIS: GTEFL argued that the Commission's decision to set the rate for handling of intermediary traffic was not based upon substantial evidence. GTEFL argues in its Motion that it had proposed a rate of $.002 per MOU, but that the Commission elected instead to set a rate at $.00075 per MOU. In support of its argument, GTEFL stated that the evidence presented at hearing did not support the conclusion that this rate was sufficient to recover the TSLRIC, and that witness Menard had in fact testified that she did not believe that the rate was sufficient to recover the TSLRIC.

Contrary to what GTEFL states in its motion, its proposed rate for this element was the tandem switching rate of $.00075 plus $.002 per MOU. (See Order at p. 23) Also as noted in the order, GTEFL did not provide TSLRIC data for handling of intermediary traffic. It did, however, provide LRIC data upon which the original tandem switching rate was based. The Commission determined that the difference between the LRIC and the approved rate, in the absence of any other data, could reasonably be used to cover any increment of TSLRIC over LRIC. Moreover, contrary to GTEFL's motion here, witness Menard did not state that the rate was not adequate to cover costs, because she would have had no basis for that statement. To quote the record directly:

> ...and unfortunately, as we said, I don't have the TSLRIC for the tandem piece, transport pieces. If it is comparable to the figures that are in the end office switching, I would not recover my TSLRIC. (TR 1089)

Thus, Ms. Menard is simply saying here that if the TSLRIC for tandem switching were to turn out to be similar to the LRIC estimates shown for end office switching in her exhibit, then her costs would not be covered. From that, we can presume that her LRIC end office switching costs are higher than her LRIC tandem switching costs, but this says nothing about TSLRIC estimates.

MCImetro and MFS responded to GTEFL's motion on this point. Both stated that the Commission acted properly with the evidence before it. Staff believes that nothing that GTEFL has stated in its motion points to anything that the Commission omitted from its consideration. In fact, GTEFL has used a little creative license with the record to bolster its own argument. We agree with

MCImetro's comment that GTEFL cannot be permitted to insist that its rates must cover TSLRIC costs; fail to provide those costs to the Commission; then complain that the Commission has not set a rate sufficiently high to recover those unknown costs. Staff recommends that GTEFL's motion for reconsideration with respect to the rate for handling of intermediary traffic be denied.

ISSUE 4: Should the Commission grant United/Centel's Motion for Reconsideration on the portion of Order No. PSC-96-0668-FOF-TP regarding the toll default mechanism?

RECOMMENDATION: No. Staff recommends that United/Centel's Motion for Reconsideration regarding toll default should be denied because it does not raise a material or relevant point of fact or law which was overlooked or which the Commission failed to consider when it rendered the order in the first instance. Staff further recommends that United/Centel and the respective ALECs work out how they will define their local calling areas and how they will use the NXXs, so that the local-toll distinction will not be a problem. In addition, staff recommends that the ALECs should identify and provide their local calling areas to the LECs.

However, staff recommends that the Commission, on its own motion, reconsider its decision as to whether originating or terminating access charges should apply for the toll default. Staff recommends that the company terminating the call should receive terminating switched access from the originating company unless the originating company can prove that the call is local.

The Order should be revised to read:

> When it cannot be determined whether a call is local or toll, the local exchange provider originating the call shall be assessed terminating switched access charges for that call unless the local exchange provider originating the call can provide evidence that the call is actually a local call.

STAFF ANALYSIS: United/Centel is requesting reconsideration of the Commission's order regarding the toll default mechanism. The diagrams below should help to describe the toll default mechanism. The following diagrams represent three situations where a call is sent from a LEC customer to an ALEC customer.

A. LEC Customer ========LOCAL==========> ALEC Customer

B. LEC Customer ========TOLL==========> ALEC Customer

C. LEC Customer ========????==========> ALEC Customer

In diagram A, both parties know that the call is local, so mutual traffic exchange would apply. In diagram B, both parties know that the call is toll, so the LEC would pay the ALEC terminating access

charges. Diagram C deals with the situation where the LEC does not know if the call that it is sending to the ALEC is local or toll. This is where the toll default mechanism ordered by the Commission is applied. It would be the same for all three diagrams if the call was in the other direction, from the ALEC to the LEC. Therefore, except for mutual traffic exchange, the company who terminates the call receives the payment.

United/Centel states that there are problems with the Commission's Order regarding toll default. The Commission ordered United/Centel, GTEFL, and the ALECs that:

> When it cannot be determined whether a call is local or toll, the local exchange provider shall be assessed originating switched access charges for that call unless the local exchange provider originating the call can provide evidence that the call is actually a local call. (Order, p.21)

United/Centel states that the Order discusses a situation where the local exchange provider delivering traffic to the other local exchange provider cannot determine whether the traffic it delivers is local or toll because of the manner in which the terminating local exchange provider uses NXX codes (Diagram C). In that situation, the Order states that originating switched access charges will be assessed for that call "unless the local exchange provider originating the call can provide evidence that the call is actually a local call." United/Centel argues that the term "originating" should have been "terminating," otherwise the Order makes no sense. United/Centel states that the local provider who terminates the call is the only one who can determine if the call is local or toll.

In its response motion, MCImetro agrees with United/Centel that the word "terminating" appears to have been inadvertently used in place of the word "originating" in several places in the Commission's order, and does not object to the correction or clarification of this point on reconsideration.

AT&T, in its response motion, also agrees with United/Centel and states that this decision should be the same as what was ordered in the BellSouth order in this proceeding. AT&T asserts that the originating carrier, for example United/Centel, would be able to charge originating switched access charges if it could not determine whether the call was local or toll. AT&T further states that to the extent ALECs do not have adequate NXX codes, the Commission may want to re-visit the toll default aspect of the Order.

MFS-FL disagrees with United/Centel that the word "terminating" should be substituted for "originating" in that section of the Order. MFS-FL asserts that the originating, not the terminating, carrier has the call record and therefore knows both the originating and terminating number called. MFS-FL states that absent SS7 capability the originating carrier is the only carrier who can reconcile whether a call is local or toll. Therefore, MFS-FL argues that the Order is accurate as written.

United/Centel argued that the company terminating the call should have the burden to prove if the call is local or toll. MFS-FL argued that the company originating the call is the one that knows if the call is local or toll. Staff agrees with MFS-FL that the originating company should have the burden of determining if the call is local or toll because they must be able to bill their end user appropriately. Therefore, staff does not believe that United/Centel's motion raises a material or relevant point of fact or law which was overlooked or which the Commission failed to consider when it rendered the order in the first instance.

The record on this point is not strong one way or the other, and staff recognizes that it is important to be able to determine if a call is local or toll. The LECs' local calling areas are well known because they are published in the telephone directory. However, an ALEC's local calling area may or may not be the same as the LEC's local calling area. In addition, the ALEC has statewide authority, so a call that is local to the ALEC customer may be a toll call for a LEC customer. Also, the ALEC does not have control over the assignment of NXX codes. Therefore, staff recommends that the companies work out how they will define their local calling areas and how they will use the NXXs, so that the local-toll distinction will not be a problem. In addition, staff recommends that the ALECs should identify and provide their local calling areas to the LECs.

Staff does not believe that the concern regarding this portion of the Order should be over who can determine if the call is local, but on who pays what charges when the toll default mechanism applies. Staff believes that the Order needs to be changed to clarify its intent. The relevant section of the Order states:

> When it cannot be determined whether a call is local or toll, the local exchange provider shall be assessed originating switched access charges for that call unless the local exchange provider originating the call can provide evidence that the call is actually a local call. (Order, p.21)

Staff's concern is that the language in the Order requiring originating switched access to be assessed is inconsistent with the Florida Statutes. Section 364.16(3)(a) states:

> No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.

The Order, as written, requires the payment of originating switched access for terminating a toll call and would thus not comply with the Statute. Staff recommends that the order be modified to require the payment of terminating switched access charges by the local exchange provider who delivers traffic to another provider and cannot prove that it is local. To do so, staff recommends that the portion of the order be modified as follows:

> When it cannot be determined whether a call is local or toll, the local exchange provider originating the call shall be assessed terminating switched access charges for that call unless the local exchange provider originating the call can provide evidence that the call is actually a local call.

Therefore, staff recommends that United/Centel's Motion for Reconsideration regarding toll default be denied. However, staff recommends that the Commission reconsider, on its own motion, its decision as to whether originating or terminating access charges should apply for the toll default. Staff recommends that the company terminating the call should receive terminating switched access from the originating company unless the originating company can prove that the call is local.

ISSUE 5: Should the Motion for Reconsideration of United/Centel to allow LECs to charge Expanded Interconnection rates, where applicable, based on whatever facilities are needed to accomplish interconnection where ALECs are collocated in the same LEC tandem, be granted?

RECOMMENDATION: The order should be clarified to emphasize that LECs may charge for the facilities used when ALECs are collocated, and that it was not the Commission's intention to limit the services provided.

STAFF ANALYSIS: United/Centel has requested reconsideration of that part of the order that states, where ALECs are collocated at the same LEC tandem, they should be allowed to cross-connect with each other rather than transit the LEC switch, and that the LECs should be allowed to charge the applicable special access cross-connect rate to the ALEC ordering the cross-connect. United/Centel argues that the appropriate charges for this function should be based on the existing expanded interconnection tariff based on whatever facilities are needed to accomplish that interconnection.

The only other party to respond to this motion was MCImetro, who agrees with United/Centel that a LEC should be allowed to charge for a function to the extent that it provides more than a single cross-connect. However, MCImetro states that the appropriate charge should be at TSLRIC, not at a currently tariffed rate.

Staff recommends that the order be clarified to emphasize that LECs may charge for the facilities used when ALECs are collocated, and that it was not the Commission's intention to limit the services provided. Rather the issue before the Commission was whether cross connection was allowed, and hence the decision addressed that activity only. The rates in the expanded interconnection tariff would apply where applicable.

ISSUE 6: Should the Commission grant United/Centel's Motion for Reconsideration on the portion of Order No. PSC-96-0668-FOF-TP that requires United/Centel to provide certain emergency information and E911 backup routing capabilities to the ALECs?

RECOMMENDATION: The Commission should deny United/Centel's Motion for Reconsideration on the portion of Order No. PSC-96-0668-FOF-TP that requires United/Centel to provide certain emergency information. However, the Commission should grant United/Centel's Motion for Reconsideration on the portion of Order No. PSC-96-0668-FOF-TP that requires United/Centel to utilize certain methods of backup routing of E911 calls.

STAFF ANALYSIS: United/Centel is requesting that the Commission reconsider the following:

> United/Centel shall provide the respective ALECs with a list consisting of each municipality in Florida that subscribes to Basic 911 service, the E911 conversion date and ten-digit directory number representing the appropriate emergency answering position for each municipality subscribing to 911 services. Order at 30.

United/Centel states that they should not be required to provide this information to the ALECs. United/Centel reargues that this information should be acquired from the 911/E911 coordinators or the emergency agencies themselves. The company adds that only the ALECs can identify the geographic location of the ALEC customer and the appropriate requirements for 911/E911 service.

Staff believes that United/Centel's Motion does not show material and relevant facts or points of law the Commission failed to consider when it issued Order No. PSC-96-0668-FOF-TP. Therefore, staff recommends the Motion be denied on this point.

United/Centel is also requesting clarification or reconsideration of the following:

> If the primary tandem trunks are not available, the respective ALEC shall alternate route the call to the designated secondary E911 tandem. If the secondary tandem trunks are not available, the respective ALEC shall alternate route the call to the appropriate Traffic Operator Position System (TOPS) tandem. Order at 33.

United/Centel asserts that they do not have secondary tandems nor does the company alternate route traffic to a TOPS tandem. Although this requirement is included in an agreement between

United/Centel and Intermedia Communications of Florida, Inc., United/Centel states that the company was in error in stating that it could perform this task in the Intermedia agreement. (Schleiden EXH 7, p. 132) United/Centel explains that it alternate routes traffic via specialized equipment located in United central offices but that this equipment is not utilized in Centel central offices. The company is silent as to how E911 traffic is routed for Centel.

The Commission states in its Order that "the ALECs' backup systems for E911 should be consistent with United/Centel's and that this is an operational concern that should be a priority to all parties." (Order p.32) Staff believes that E911 emergency service should be transparent to the end user.

Staff recommends that the Commission grant United/Centel's motion for reconsideration of Order No. PSC-96-0668-FOF-TP with respect to backup routing capabilities of E911 calls. It appears that United/Centel has presented a point of fact in its motion that the Commission failed to consider or overlooked at the time it rendered its decision. Staff believes that it is unclear from the record that United/Centel does not have the capability to comply with the backup E911 routing methods ordered in Order No. PSC-96-0668-FOF-TP. Regardless, staff recommends that the Commission reconsider this point. In addition, staff recommends that United/Centel and MFS-FL work together and file with this Commission a comprehensive proposal on how 911/E911 traffic will be routed. The proposal shall be filed with this Commission within 30 days from the date of this order. The proposal shall include a provision for backup systems, cost and price support, and a list of operational procedures for furnishing 911/E911 service.

ISSUE 7: Should the Commission grant United/Centel's Motion for Reconsideration on the portion of Order No. PSC-96-0668-FOF-TP on white and yellow page directories?

RECOMMENDATION: No. United/Centel's Motion does not show material and relevant facts or points of law the Commission failed to consider when it issued Order No. PSC-96-0668-FOF-TP. Therefore, staff recommends the Motion be denied on this point.

STAFF ANALYSIS: United/Centel requests reconsideration on the Commission's decision for white and yellow page directories. The Commission ordered United/Centel to provide directory listings for ALEC residential and business customers in its white and yellow page directories at no charge. In addition, the Commission ordered that United/Centel publish and distribute the directories at no charge.

United/Centel argues that the Commission's reason for their decision to require that United/Centel assume these obligations at no charge is that the company will be gaining revenues from the ALECs' directory listings. United/Centel states that they do not receive revenues from publishing and distributing directories. They claim the directories are published by separate entities under contract to United/Centel. United/Centel asserts that even if the company is receiving some financial benefit from directory publishing and distribution, there is no competent evidence in the record to show that United/Centel will be gaining revenues from ALECs' directory listings.

United/Centel argues that both Section 364.161(1), Florida Statutes, and the Telecommunications Act of 1996 preclude the Commission from requiring United/Centel to provide directory listings and publish and distribute directories at no charge. United/Centel argues that these are network elements that must be cost based and may include a reasonable profit. United/Centel states that the Commission has no authority to require that it provide directory listings and publish and distribute directories at no charge.

AT&T, MCImetro and MFS-FL support the Commission's decision. They point out that the directory publishing companies are affiliates of United/Centel, not just separate entities. MCImetro and MFS-FL state that United/Centel does not pay its affiliates for residential and business listings. In addition, its affiliates compensate United/Centel for customer information for business listings included in the yellow pages. (Poag, EXH. 41, pp. 15-16) MCImetro argues that United/Centel will be gaining revenues from ALEC listings.

Staff agrees with the arguments presented by AT&T, MCImetro, and MFS-FL. Staff recommends that United/Centel's request for reconsideration of the Commission's order on white and yellow page directories be denied. United/Centel's Motion does not show material and relevant facts or points of law the Commission failed to consider when it issued Order No. PSC-96-0668-FOF-TP. United/Centel makes no showing that the Commission made a mistake of law that justifies reconsideration.

ISSUE 8: Should the Commission grant MCImetro's Cross-Motion for Reconsideration on the portion of Order No. PSC-96-0668-FOF-TP that sets the time frame for GTEFL and United/Centel to file tariffs?

RECOMMENDATION: No. Staff recommends that the Commission should deny MCImetro's Cross Motion for Reconsideration to change the filing deadline to 30 days from the vote on reconsideration. However, staff recommends that the filing deadline should be changed to 30 days from the issuance of the reconsideration order as suggested by GTEFL.

STAFF ANALYSIS: On June 17, 1996 MCImetro filed a Cross-Motion for Reconsideration. MCImetro urges the Commission to reconsider the portion of the Order which gives GTEFL and United/Centel 60 days from the order on reconsideration in which to file tariffs. (Order, p. 49) MCImetro states that there was no testimony addressing the appropriate tariff filing interval, and that the 60-day requirement was based only on a verbal recommendation by the Commission staff.

MCImetro asserts that if the tariff filings are delayed until 60 days from the reconsideration order, the ability of ALECs to commence business under the terms and conditions ordered by the Commission may be adversely affected. MCImetro states that such a time frame would be inconsistent with the thrust of the amendments to Chapter 364, which put interconnection proceedings on a tight timetable in order to ensure that the conditions for local competition would be in place as quickly as possible.

MCImetro suggests that a more reasonable time frame would be 30 days from the Commission's vote on reconsideration. MCImetro asserts that the LECs have known, since May 20th, the parameters of the Commission's decision. MCImetro states that even with slight changes that could come about as a result of reconsideration, there should be no impediment to prompt tariff filings to implement that decision.

On June 26, 1996 GTEFL filed a Response to MCImetro's Cross-Motion for Reconsideration. GTEFL recommends a compromise between the Commission's Order and MCImetro's suggestion. GTEFL states that it does not object to a 30-day time frame for filing tariffs. However, GTEFL states that the 30 days should run from the date of the Commission's order regarding reconsideration, rather than from the Commission's vote.

GTEFL gives several reasons for wanting the time to begin when the order is issued instead of from the Commission's vote. First,

GTEFL argues that tariff filings based on oral votes have the potential to cause confusion because the final order might be different than the recommendation or the Commission might make oral modifications. The tariffs filed might not be completely accurate and changes might have to be made to the tariffs after the final order is issued. GTEFL argues that this would waste Commission and company resources, and confuse customers. Second, GTEFL argues that counting from the date of a vote, rather than an order, is at odds with parties' appellate rights. Third, MCImetro's suggestion is inconsistent with the Commission's action in the unbundling docket in which tariff filings are due 30 days from the order and not the vote.

GTEFL states that its suggestion of tariff filings 30 days from the Commission's order on reconsideration will preserve the integrity of the appellate scheme, prevent potentially disruptive tariff revisions, and be in accord with the tariffing requirements in the unbundling docket. GTEFL adds that the shorter 30-day filing deadline will allow MCImetro and other ALECs to start operating under the terms set by the Commission a month earlier than they would otherwise.

Staff believes that MCImetro's Motion is appropriate in stating that there was no discussion in the record regarding the time frame for filing tariffs. However, the Commission typically sets time frames for parties to make filings when it issues its orders. Staff agrees with MCImetro that Chapter 364.162, Florida Statutes, put interconnection proceedings on a tight time frame in order to ensure that conditions for local competition would be in place as quickly as possible. Therefore, staff believes that ALECs should not be delayed in taking the terms and conditions set forth in United/Centel's and GTEFL's tariffs. At the same time, staff agrees with GTEFL that the potential of having to make tariff revisions because the tariffs are not accurate should be avoided. Therefore, staff recommends that the Commission should deny MCImetro's Cross Motion for Reconsideration to change the filing deadline to 30 days from the vote on reconsideration. Instead, staff recommends that the filing deadline should be changed to 30 days from the issuance of the reconsideration order.

ISSUE 9: Should the Commission grant United/Centel's Motion for Reconsideration on the portion of Order No. PSC-96-0668-FOF-TP regarding the informational pages of the directory.

RECOMMENDATION: No. Staff recommends that United/Centel's Motion for Reconsideration regarding the informational pages of the directory should be denied because it does not raise a material or relevant point of fact or law which was overlooked or which the Commission failed to consider when it rendered the order in the first instance.

STAFF ANALYSIS: United/Centel, in its Motion, is requesting that the Commission reconsider its decision regarding the informational pages of the directory. In Order No. PSC-96-0668-FOF-TP, the Commission ordered that:

> United/Centel shall work with the respective ALECs to ensure that the appropriate ALEC data, such as calling areas, service installation, repair, and customer service, is included in the informational pages of United/Centel's directory. (Order, p.46)

United/Centel states that United/Centel's white pages directory is published by a separate, unregulated entity and the informational pages are partially provided without charge to United/Centel. United/Centel argues that these informational pages are supplied in compliance with Rule 25-4.040(3) and (4), Florida Administrative Code, and that these rules do not apply to ALECs. United/Centel asserts that the Commission is attempting to do indirectly what it cannot do directly. United/Centel states that it would be more appropriate for the Commission to require the ALECs to deal directly with the white pages directory publisher rather than potentially saddle United/Centel with an additional expense not borne by its competitors.

MFS-FL filed a response to United/Centel's Motion. MFS-FL states that United/Centel should have no objection to passing through the benefits of its special relationship with its publishing affiliates to work with ALECs to ensure that their informational pages are included in the directory. MFS-FL asserts that any assertion that such coordination "saddles" United/Centel with costs is fanciful.

Staff does not believe that United/Centel's Motion raises a material or relevant point of fact or law which was overlooked or which the Commission failed to consider when it rendered the order in the first instance. Therefore, staff recommends that the Motion be denied.

ISSUE 10: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open to address other information as required by Order No. PSC-96-0668-FOF-TP.