

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into)	DOCKET NO. 890183-TL
the operations of alternate access)	ORDER NO. 22580
vendors.)	ISSUED: 2-20-90
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, CHAIRMAN
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER
 JOHN T. HERNDON

ORDER ESTABLISHING A GENERIC
 INVESTIGATION INTO THE OPERATIONS OF
 ALTERNATE ACCESS VENDORS

BY THE COMMISSION:

On February 3, 1989, GTE Florida, Incorporated, (GTEFL) filed a Petition requesting that this Commission initiate an investigation of alternate access vendors, a new type of telecommunications provider operating within Florida, and that we set out the terms, conditions, rules and requirements applicable to such telephone companies. On that date, this docket was administratively initiated to address GTEFL's Petition. GTEFL states that, as a local exchange company (LEC), it is concerned that the monopoly aspects of the LECs' operations are being challenged by this new player in the telecommunications industry. GTEFL cites other instances in which we have investigated numerous other developments in the evolution of the telecommunications industry, such as intrastate interLATA competition, intraEAEA toll competition, shared tenant service competition, coin telephone competition, customer premises equipment competition and cellular competition. GTEFL states that such an investigation is necessary now to ensure a "level playing field" for the LECs and these new alternate access vendors (AAVs). GTEFL alleges that Intermedia Communications of Florida, Inc., (ICI) is a ". . . private alternative carrier of telecommunications traffic which gives a customer an alternative to the local exchange company accessing long-distance carriers." ICI, GTEFL states,

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offers fully fiber optic functionality from end users to interexchange carriers' points of presence (IXCs' POPs), as well as between IXCs' POPs.

GTEFL cites our Order No. 19687, issued July 19, 1988, in which we approved the transfer of the IXC certificate held by Intermedia Communications, Inc., to Intermedia Communications of Florida, Inc., to show that, because of concerns similar to GTEFL's, we prohibited ICI from constructing intrastate bypass facilities without first meeting all our restrictions regarding bypass. In that Order, we also prohibited ICI from utilizing end user contract rates without first petitioning this Commission at the time it desires to actually offer end user contract rates.

On February 28, 1989, ICI filed a Motion in Opposition to Petition of GTEFL arguing that we should deny GTEFL's Petition because what it requests is illegal, inappropriate, inefficient and unfair. ICI states that granting GTEFL's Petition is illegal because we must initiate rulemaking in order to develop generic rules and conditions applicable to this new class and to decide the applicability of rules and orders to this type of entity. ICI also asserts that GTEFL has no legal standing to request a declaration of ICI's rights and obligations under any statutory provision, rule or order because only ICI has the right to request such a declaratory statement. ICI complains that the focus of this proceeding has been unfairly and discriminatorily placed on its operations. ICI asserts that GTEFL has not alleged any violations of statutes or rules by ICI and, therefore, has no grounds to request any sanctions against ICI.

ICI has also argued that we could more efficiently address the question of appropriate restrictions on the provision of direct connections for intrastate communications, or bypass, in the ongoing Docket No. 880812-TP, Investigation into EAEAs, TMAs, 1+ Restriction to the LECs and Elimination of the Access Discount. The hearing in Docket No. 880812-TP has already been concluded. In that proceeding, we did not address the specific facts and policy questions involved with alternate access vendors.

We share many of the concerns raised by GTEFL in its Petition. We must investigate and examine the specific facts about how alternate access vendors are operating and then

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decide any policy questions those facts generate. However, we will deny GTEFL's Petition because we find it more appropriate to establish this generic investigation on our own motion. This investigation into the operations of alternate access vendors will culminate in a full evidentiary proceeding. All parties will have the opportunity to engage in appropriate discovery, to file testimony, and to cross-examine all witnesses. At the conclusion of such proceeding, we will issue a final order setting out the terms and conditions on which alternate access vendors shall operate. At that time, if it appears appropriate, we will initiate rulemaking for this new class of carriers.

Rulemaking, at this point in time, would be totally premature. We must first fully investigate the situation before we can attempt to formulate specific rules, if any are necessary, for alternate access vendors. This procedure is identical to that we have utilized in numerous prior dockets in which we have investigated various types of providers as they have appeared in the evolving telecommunications industry, including shared tenant services providers, private pay telephone (PATS) providers, IXC providers, and alternate operator services (AOS) providers.

There is nothing unfair or discriminatory regarding ICI in our initiation of this proceeding. It is true that ICI is one of the very few alternate access vendors that we have been made aware of at this point in time. All alternate access vendors operating in this State will be affected by the outcome of this proceeding and, therefore, are strongly encouraged to fully participate. All parties that have intervened in this docket prior to the issuance of this Order are hereby made parties to this generic investigation. Also, in the interests of judicial economy, all discovery which was commenced in this docket prior to the issuance of this Order shall proceed.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that there is hereby established a generic investigation into the operations of alternate access vendors. However, the Petition of GTE Florida, Inc., is hereby denied, as is the Motion in Opposition filed by Intermedia Communications of Florida, Inc. It is further

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ORDERED that all parties that have already intervened in this docket are hereby made parties to this generic investigation. All alternate access vendors operating in the State of Florida will be substantially affected by the outcome of this proceeding, and therefore, are strongly encouraged to become parties to this investigation.

By ORDER of the Florida Public Service Commission
this 20th day of FEBRUARY, 1990.


STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal

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in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.