

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic Investigation into the) DOCKET NO. 890183-TL
 Operations of Alternate Access Vendors.) ORDER NO. 22680
 _____) ISSUED: 3-13-90

ORDER ON PREHEARING PROCEDURE

Pursuant to Order No. 22580, issued February 20, 1990, the Commission has, on its own motion, established this proceeding to investigate the operations of alternate access vendors.

I. Prehearing Statements

Pursuant to the provisions of Rule 25-22.038, Florida Administrative Code, all parties and Staff are hereby required to file with the Director of Records and Reporting a prehearing statement on or before August 1, 1990. Each prehearing statement shall set forth the following:

(a) all known witnesses that may be called and the subject matter of their testimony;

(b) all known exhibits, their contents, and whether they may be identified on a composite basis and witness sponsoring each;

(c) a statement of basic position in the proceeding;

(d) a statement of each question of fact the party considers at issue and which of the party's witnesses will address the issue;

(e) a statement of each question of law the party considers at issue;

(f) a statement of each policy question the party considers at issue and which of the party's witnesses will address the issue;

(g) a statement of the party's position on each issue identified pursuant to paragraphs (d), (e) and (f) and the appropriate witness;

(h) a statement of issues that have been stipulated to by the parties;

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(i) a statement of all pending motions or other matters the party seeks action upon; and

(j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

To facilitate the management of documents in this docket, parties and Commission Staff shall submit an exhibit list with their respective prehearing statements. Exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the Exhibit Number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 870675-TL
J. Doe Exhibit No. _____
Cost Studies for Minutes
of Use by Time of Day

The original and fifteen copies of each prehearing statement must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of August 1, 1990. Failure of a party to timely file a prehearing statement shall be a waiver of any issues not raised by other parties or by the Commission Staff. In addition, such failure shall preclude the party from presenting testimony in favor of his or her position on such omitted issues. Copies of prehearing statements shall also be served on all parties. Prehearing statements shall substantially conform to the Florida Rules of Civil Procedure requirements as to form, signatures, and certifications.

II. Prefiled Testimony and Exhibits

Each party is required to prefile all exhibits and all direct testimony it intends to sponsor in written form. Prefiled testimony shall be typed on standard 8 1/2 x 11 inch transcript quality paper, double spaced, with 25 numbered lines, in question and answer format, with a sufficient left

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margin to allow for binding. An original and fifteen copies of each witness' prefiled testimony and each exhibit must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the due date. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony. Copies of all prefiled testimony shall also be served by the sponsoring party on all other parties.

III. Prehearing Conference and the Provisions of
Rule 25-22.038(5)(b), Florida Administrative Code

A final prehearing conference will be held on August 17, 1990, in Tallahassee. Rule 25-22.038(5)(b), Florida Administrative Code, provides:

Any party who fails to attend the final prehearing conference, unless excused by the prehearing officer, will have waived all issues and positions raised in his or her prehearing statement.

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: he or she was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issues; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, he or she shall bring that fact to the attention of the prehearing officer. If the prehearing officer finds

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that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify his or her position in a post-hearing statement of issues. In the absence of such a finding by the prehearing officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in his or her post-hearing statement.

IV. Schedule for this Proceeding

The following dates have been established to govern the key activities of this proceeding in order to maintain an orderly procedure.

1. May 14, 1990 - Direct Testimony to be filed
2. June 15, 1990 - Staff Testimony, if any, to be filed
3. July 16, 1990 - Rebuttal Testimony to be filed
4. August 1, 1990 - Prehearing Statements to be filed
5. August 17, 1990 - Prehearing Conference
6. September 19, 20, and 21, 1990 - Hearings

V. List of Issues

Attached to this order as Appendix "A" is a list of the issues which will be addressed in this proceeding. Prefiled testimony and prehearing statements shall be addressed to the issues set forth in Appendix "A".

VI. Discovery

Discovery requests served on parties in this docket prior to the issuance of Order No. 22580 shall be responded to within 35 days of the issuance of that Order on February 20, 1990.

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When subsequent interrogatories or requests for production are served on a party, and the respondent intends to object to or ask for clarification of such interrogatory or request for production, the objection or request for clarification shall be made within ten days of service of the interrogatory or request for production. This procedure is intended to reduce delay time in discovery.

VII. Requests for Specified Confidential Classification of Documents

There is a presumption in the law of the State of Florida that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." It is our view that the burden to be met by one requesting specified confidential classification of documents submitted during a proceeding before this Commission is very high.

For these reasons, and because of recent events, the Prehearing Officer has concluded that parties must be more specific in identifying the precise material believed to be proprietary and in supporting their arguments with relevant reasons justifying nondisclosure. All the parties are reminded that our confidentiality rule is explicit in requiring that each request for specified confidential classification be fully justified by a showing sufficient to meet the burden of proving harm through public disclosure. The Prehearing Officer will grant the requested specification only in individual instances where the parties have met that burden with a sufficient showing to support their requests. The parties are expected to limit their requests for confidential treatment to only those discrete portions of documents that would truly be harmful if disclosed.

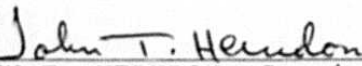
In order to assure that it has sufficiently identified and justified its individual requests for specified confidential classification, a party shall follow the steps explained below. The Commission's practice is to assign a Document Number (DN) to each document or set of documents accompanying

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an individual request for specified confidential classification. In the case of two or more documents being submitted for consideration under one DN, the identification of the specific portions of each document has been totally inadequate in some recent cases. Accordingly, if a party submits more than one document under a single request pursuant to the confidentiality rule, an index of all documents must accompany the request. This index shall assign a letter to each document, and all references to that document in the request shall refer to that document by the letter assigned to it in the index. Thereafter, all pleadings filed by the parties shall refer to that specific document by the DN and the letter assigned to it in the index.

This Commission must be presented with a specific itemized listing of information, by page, line and column number, with a specific justification for confidentiality for each item. The pages shall be numbered consecutively in each discrete document and the lines on each page shall be numbered. Merely highlighting numbers and words on a page as a means of indicating the portion considered proprietary by the party is insufficient because it leads to difficulty in describing this material in the order ruling on the request. References in the request and in related pleadings to the material sought by the party to be granted specified confidential classification shall be by item, page, column and line numbers.

By ORDER of John T. Herndon, Commissioner and Prehearing Officer, this 13th day of MARCH, 1990.



JOHN T. HERNDON, Commissioner
and Prehearing Officer

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ISSUES FOR DOCKET NO. 890183-TL -
GENERIC INVESTIGATION INTO THE OPERATIONS OF
ALTERNATE ACCESS VENDORS

1. What is the definition of an Alternate Access Vendor (AAV)? What services do they currently provide? What services can they provide, now or potentially? How are these services provided?
2. Should AAVs be classified as a separate class of providers of telecommunications services? If so, do they require separate rules and certification?
3. Are the services provided by, or potentially provided by, an AAV in the public interest and why?
4. Are the services provided and/or proposed to be provided by AAVs consistent and in compliance with existing Florida Public Service Commission orders, rules and policies, especially regarding bypass and/or resale of local transport? Why or why not?
5. How can the jurisdictional nature of traffic carried over an AAV provided service be determined? How is jurisdictional call screening performed by AAVs? If not currently performed by the AAVs, can it be performed? How expensive is it to perform?
6. Is an AAV's network configured to perform switching functions? If so, describe the switching functions it performs.
7. Are AAVs telephone companies providing local exchange service within the meaning of Chapter 364, Florida Statutes? Why or why not? Will AAVs infringe on the franchise rights of the LECs?
8. What effect will the provision of services by AAVs have on the local telephone rates of certified LECs? What effect do special access or private line services, whether provided by a LEC or an AAV, have on universal service? What means can be developed to mitigate any such effects?

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9. What are the economic benefits of competition for the provision of high-speed special access or private line services? Who are the beneficiaries of AAVs' services?
10. Who are the customers of the AAVs and how is the billing done?
11. What are the AAVs' provisions for the maintenance of quality of service?
12. How will AAVs deal with customer complaints?
13. How are new AAV services to be promoted and/or marketed? What engineering support for these services is to be provided?
14. With which industry organizations (i.e., OPASTCO, FIXCA, NTCA, etc.) will the AAVs affiliate?
15. What companies are presently providing AAV service in Florida and where are they located?
16. What services, if any, should AAVs not be allowed to provide? Explain why each service, if any, should be disallowed.
17. What actions, if any, should be taken by the Florida Public Service Commission in order for LECs to compete with AAVs?
18. Do AAVs have the technical capability to block unauthorized calls (e.g., intraEAEA and/or local calls)? If not, what procedures are used to regulate unauthorized transmission over AAV facilities?
19. What costing methodology do AAVs use in developing ICB rates for DS-1 and DS-3 services?
20. Will AAVs have an effect on the reliability of the telecommunications infrastructure and the provision of redundancy and diversity?