

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into)
 the Operations of Alternative)
 Access Vendors)
 _____)

DOCKET NO. 890183-TL
 ORDER NO. 24301
 ISSUED: 3/27/91

Pursuant to notice, a Prehearing Conference was held on February 22, 1991, in Tallahassee, Florida, before Commissioner Michael McK. Wilson, as Prehearing Officer.

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PREHEARING ORDER

I. BACKGROUND

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 stated that, as a local exchange company (LEC), it was concerned that the monopoly aspects of the LECs' operations are being challenged by this new player in the telecommunications industry. GTEFL stated that such an investigation is necessary to ensure a "level playing field" for the LECs and these new alternate access vendors (AAVs).

Because we share many of the concerns raised by GTEFL in its Petition, we initiated this proceeding by Order No. 22580, issued February 20, 1990, to investigate and examine the specific facts about how alternate access vendors are operating and then decide any policy questions those facts generate. We denied GTEFL's Petition because we found 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 to be held March 28 and 29, 1990. At the conclusion of such proceeding, we may issue a final order setting out the terms and conditions on which alternate access vendors

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shall operate. At that time, if it appears appropriate, we will initiate rulemaking for this new class of carriers.

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 (AOS) providers.

II. TESTIMONY AND EXHIBITS

Upon insertion of a witness's testimony, exhibits appended thereto may be marked for identification. After opportunity for opposing parties to object and cross-examine, the document may be moved into the record. All other exhibits will be similarly identified and entered at the appropriate time during hearing. Exhibits shall be moved into the record by exhibit number at the conclusion of a witness's testimony.

Witnesses are reminded that on cross-examination, responses to questions calling for a yes or no answer shall be answered yes or no first, after which the witness may explain the answer.

III. ORDER OF WITNESSES

Because there was more than one schedule for filing testimony, the specific filing dates for the testimonies to be utilized in this hearing are indicated below.

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>DATE</u>	<u>ISSUES</u>
<u>DIRECT</u>			
Robert F. Benton (5/25/90)	Intermedia	3/28/91	All
*Michael Viren (*Intermedia has filed a motion to accept Mr. Viren's late-filed testimony)	Intermedia	3/28/91	All
Joseph P. Gillan (5/21/90)	Intermedia	3/28/91	All
Ronald L. Tolliver (12/17/90)	Intermedia	3/28/91	All

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<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>DATE</u>	<u>ISSUES</u>
Bobette D. Escolas (12/20/90)	Metropolitan	3/28/91	All
Beverly Y. Menard (12/14/90)	GTEFL	3/28/91	All
David B. Denton (12/14/90)	Southern Bell	3/28/91	All
C. L. Teal (12/14/90)	United	3/28/91	1,3-7, 9-14,16, 17,19

REBUTTAL

Joseph P. Gillan (1/15/91)	Intermedia	3/29/91	
Bobette D. Escolas (1/15/91)	Metropolitan	3/29/91	
David B. Denton (1/15/91)	Southern Bell	3/29/91	

IV. BASIC POSITIONS

INTERMEDIA'S BASIC POSITION: The Commission should permit competition in the dedicated transmission market. Such competition will bring to the intrastate consumer benefits already enjoyed by the interstate consumer. Moreover, intrastate competition in this market cannot be reasonably expected to hurt financially local exchange companies, nor lead to increased local rates.

To facilitate competition in the dedicated transmission market, the Commission should effect the following changes:

- 1) adopt a certification procedure to authorize the entry of AAVs as transmission providers into the intrastate markets;
- 2) eliminate the "bypass restrictions," which impede the competitive provision of dedicated connections between end-users and interexchange carriers; and
- 3) eliminate the resale restrictions on private line service.

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METROPOLITAN'S BASIC POSITION: Alternative Access Vendors ("AAVs"), which provide dedicated high speed voice and data transmission services, should be classified as interexchange carriers, and the Commission should encourage competition in the AAV market by adopting a certification procedure for entry into the AAV market. Competition will result in the lower prices, enhanced reliability, and innovative customized services which will benefit significantly businesses in Florida.

MCI'S BASIC POSITION: The competitive provision of "alternative access vendor services" -- intraEAEA private lines and jurisdictionally intrastate special access from end-users to IXCs -- is in the public interest and should be authorized pursuant to Section 364.337(3)(a), Florida Statutes. Other services provided by companies that may be labeled AAVs -- carrier to carrier links, intra-carrier links, jurisdictionally interstate special access, and interEAEA private lines -- are either exempt from Commission jurisdiction or are clearly authorized activities for any company that holds an IXC certificate.

SPRINT'S BASIC POSITION: US Sprint holds a certificate of public convenience and necessity from the Florida Public Service Commission ("Commission") to operate as a minor interexchange carrier. Access costs are a substantial part of US Sprint's cost of doing business in Florida. Because this docket could affect US Sprint's access to the local network and the rates for such access, US Sprint has a substantial interest in this proceeding.

US Sprint is not an Alternative Access Vendor ("AAV"). US Sprint provides long distance telecommunications services, not access services. AAVs provide primarily long distance access, not long distance transport.

US Sprint's position on the specific issues in this proceeding is described in more detail below.

GTEFL'S BASIC POSITION: GTEFL's basic position in this proceeding is that an AAV is a separate provider of telecommunications services that must be placed in a regulatory classification for the purposes of insuring the consumer that price, quality and dependability are assured and will be protected under the Commission's regulatory jurisdiction. Based on the current environment, AAVs can and have engaged in various types of bypass such as IXC to IXC transport and customer premise to IXC access. The Commission's decision to regulate the AAV provider would serve to insure that this bypass is appropriate and that the local rates are not unduly affected. In addition, GTEFL seeks to explore in

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this docket any attempts by AAVs to engage in point-to-point end user local transport. GTEFL opposes this type of local transport and deems it to be in violation of the Company's franchise and applicable state statutes. Indeed, Section 364.337(3)(a) and (3)(b), which became law on October 1, 1990, prohibits the AAV from providing any sort of switching functionality and local point-to-point transport.

UNITED'S BASIC POSITION: United's basic position in this proceeding is that most telecommunication products and services face some form of competition. AAVs' desire to compete in the provision of dedicated and basic exchange services is evidence of this fact. True competition is a catalyst for superior technology, improved service quality and the establishment of rates which are market based. As such, true competition brings an array of benefits to the marketplace. However, the general body of ratepayers does not reap these benefits when competition is introduced in an artificially restricted or biased manner. If dedicated interexchange and basic exchange services are to be placed into a competitive environment, the local exchange company (LEC) must be freed of certain regulatory constraints. Specifically, the LEC must have the ability to price flexibly and respond to the demands of the marketplace. Without such freedoms, the benefits of competition will be enjoyed by a select segment of consumers at the expense of those who do not have such alternatives available to them.

SOUTHERN BELL'S BASIC POSITION: AAVs represent a new entrant into the telecommunications services market. On a technological level, the types of services that can be offered by AAVs are literally unknown at the present time. However, the range of services that can potentially be offered by AAVs is vast. Therefore, the effect AAVs will have on the local exchange companies ("LEC") and their exchange service subscribers over the long term should be considered. The Commission should consider carefully the potential effects of AAVs' entry into the telecommunications market and balance these with its concern for universal service. AAVs should be prohibited from any direct duplication of local exchange services absent a finding by this Commission pursuant to Sections 364.335(3) and 364.337(3), Florida Statutes. If AAVs are allowed to provide other telecommunications services in Florida, they should be subject to the same rules, requirements, and obligations as the LECs and the IXCs are today. These obligations should extend to providing support for universal service.

Finally, the Commission must provide regulatory flexibility so LECs can meet the challenges of competition. AAVs intend to siphon

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off services provided to large telecommunications users over the local exchange network which provide a contribution to universal service. To the extent that AAVs have the potential to expand their service offerings, the loss of contribution could become significant. LECs need the regulatory flexibility to meet these competitive challenges before, not after, they develop.

ALLTEL'S BASIC POSITION: We expect that the Alternate Access Vendors (AAV) will be attracted to Local Exchange Carrier's area with high access density and/or major business developments where high profit potential may be perceived to exist. Certainly, ALLTEL is convinced that although the initial AAV targets will be large metropolitan areas, eventually they will be attracted to our serving areas.

The current access rules have been developed through exhaustive deliberations and proceedings by the Federal Communications Commission and the Florida Public Service Commission. Out of these proceedings has emerged a system of interconnection and access that is intended to properly balance public policy goals and insure that the public interest is being met. At a minimum the four public policy goals of the industry as set forth in the access environment must be considered. Those goals include, (1) preservation of universal service; (2) avoidance of unreasonable discrimination; (3) promotion of network efficiency; and (4) minimization of uneconomic bypass.

The issues relative to Alternate Access Vendors will be extremely important to ALLTEL as they relate to existing and yet to be formed Commission policies. New market entrants should not undermine public policy goals or subvert jurisdictional authority in the pursuit of their business ventures.

OPC'S BASIC POSITION: The Commission should allow alternative access vendors to provide unswitched private line services under Section 364.337, Florida Statutes.

STAFF'S BASIC POSITION: Staff's basic position in this proceeding is that AAVs provide some services that are potentially in the public interest. Currently, Chapter 364, Florida Statutes, limits the services that AAVs can provide to specific types of dedicated service. Staff believes that the competition to LECs' dedicated services may provide ratepayers of a LEC with enhanced telecommunications services at comparable rates. It does not appear at this time that allowing AAVs to operate will substantially impact the LEC.

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V. ISSUES AND POSITIONS:

ISSUE 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?

INTERMEDIA: There is no generally accepted definition of this term, but most would probably agree that the term refers to a company, other than the local monopoly telephone company, that provides:

- (1) dedicated transmission path from one point-of-presence to another point-of-presence of a single long distance company or from one long distance company to another (POP to POP service);
- (2) dedicated transmission path from an end user to the long distance company of the user's choice (end user to POP); and,
- (3) dedicated transmission path from one end user location to one or more other end user locations (point-to-point or point-to-multipoint).

Thus, in essence, an "AAV" is a dedicated transmission provider, as are the LECs. Most AAVs provide dedicated, high speed transmission paths at DS1 (1.544 million bits per second) and DS3 (44.736 million bits per second) levels. The services are leased at monthly rates with a one-time nonrecurring charge at the commencement of service. AAV "services" are often referred to as pipes, that is, the AAV provides the conduit through which the user can send any form of digital intelligence, with all forms travelling through the pipe identically.

It appears that most AAVs will continue to provide DS1 and DS3 services for the foreseeable future. Most AAVs will also provide DS0 service or a fractional DS1 service for customers who do not need the entire bandwidth of a full DS1.

Most AAVs provide ring configured systems that are fully fiber optic. However, some AAVs integrate microwave facilities into their fiber networks. The ring topology is designed to maintain diversity throughout the system such that a failure at any node or a cable cut at any point in the system does not interrupt service. Moreover, most (if not all) systems are equipped with redundant electronics that will automatically activate if the primary system fails for any reason. With these safeguards the systems are highly reliable.

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METROPOLITAN: It is difficult to define the term alternative access vendor, because the AAVs are in a constant process of redefining themselves to serve the market. Therefore, the meaning of AAV is and will be constantly changing. In general, AAVs provide dedicated point-to-point (non-switched) service between the points-of-presence ("POPs") of other telephone companies and business users and among business users. AAVs provide high speed voice and data transmission. AAVs offer two distinct types of services: (i) end-user to long distance carrier ("IXC") services, and (ii) end-user to end-user service. These services are provided by a dedicated (non-switched) point-to-point digital fiber optic communications network. (In addition, AAVs will also provide service between and among the POPs of interexchange carriers. Both MFS and other carriers have already been certificated to provide such service, which has not been classified as an "alternative access" service.)

MCI: Pursuant to Section 364.337(3)(a), an alternative access vendor (AAV) is a company that provides the following services: (i) private line service between an entity and its facilities at another location (i.e. traditional intraEAEA end-user to end-user private line service), and/or (ii) dedicated access service between an end-user and an interexchange carrier (i.e. an alternative for traditional intrastate special access). A company that provides these "alternative access services" may also provide other services that do not constitute alternative access, including: (a) carrier to carrier links, (b) intracarrier (POP to POP) links, (c) jurisdictionally interstate dedicated access service between an end-user and an IXC, and (d) interEAEA private line service. MCI has only a limited understanding of the services AAVs provide and how they are provided, based on the prefiled testimony of other parties to this docket.

SPRINT: Florida Statutes Section 364.337(3)(a) provides in relevant part:

"alternative access vendor services" means the provision of private line service between an entity and its facilities at another location or dedicated access service between an end-user and an interexchange carrier by other than a local exchange telecommunications company, and are considered to be interexchange telecommunications services.

GTEFL: The appropriate definition of an Alternate Access Vendor (AAV) is by nature amorphous due to the changing statutory

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environment in Florida and the fact that, ultimately, the market will define those legal services which the AAVs will provide.

Independent of statutory considerations, GTEFL defines an AAV as an entity which offers dedicated services as an alternative to the local exchange carrier (LEC). However, it should be noted that the definition of an AAV is subject to expansion and cannot be defined in a vacuum. Ultimately, an AAV provides an alternative to the LEC for certain services. Broad AAV service offerings include the following types of potential services: (1) point-to-point connections between two or more large business end user customer locations; (2) connections between customer locations and their interexchange carrier's POP; and, (3) carrier-to-carrier connections, either for multiple points of presence for a single carrier or to connect two separate carriers. The foregoing listing of services has been limited to dedicated facilities transmission. However, this may not be the case in the future. For example, Metropolitan Fiber Systems (MFS) filed a petition with the Federal Communications Commission on November 16, 1989, which indicates that at least this entity plans to provide switched services in the future.

UNITED: The Florida Legislature recently defined AAV operations as "the provision of private line service between an entity and its facilities at another location or dedicated access service between an end user and an interexchange carrier by other than a local exchange telecommunications company". Further, the Legislature considers these operations to be interexchange telecommunications services. It is United's position, however, that this definition does not adequately reflect that AAVs operate as local exchange providers for private line and select basic exchange services. AAVs provide services that would normally be provided by and are in direct competition with those provided by a local exchange company (LEC).

AAVs currently provide local termination and transport for interexchange carriers (IXCs) and end users via metropolitan area networks and traditional dedicated service arrangements. These facilities allow the AAV to provision voice, data and video services in the form of 64 Kbps (DS-0), 1.544 Mbps (DS-1) and 45 Mbps (DS-3) private line services, all of which are services currently available from the LEC.

Using either dedicated facilities and/or through the incorporation of switching equipment, AAVs can potentially provision most local exchange offerings, including ancillary features and functions. Current direct interconnection with end

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users and hubbing arrangements at a central node create the potential for AAVs to provide local calling today.

SOUTHERN BELL: (a) The term Alternative Access Vendor can be defined as a common carrier which provides service and transport facilities alternatives to those normally provided by the LECs. Amended Section 364.337(3)(a), Florida Statutes, now provides a definition of "alternative access vendor services". The statute states that "'alternative access vendor services' means the provision of private line service between an entity and its facilities at another location or dedicated access service between an end user and an interexchange carrier by other than a local exchange telecommunications company, and are considered to be interexchange telecommunication services." Typically, their services are provided through high capacity facilities in well defined, high density urban areas.

(b) Generally, AAVs install their own fiber facilities in geographically specific high density areas. They then supply high capacity services, such as DS1 or DS3, for lease to end users.

(c) Technologically, the range of services that can potentially be offered by AAVs is vast. Initially, by offering high capacity dedicated services to customers and IXC's, they can establish a customer base. These services can be used to access an IXC's POP or to provide private line service. To add switching functionality to an established AAV market would not be difficult. With an established customer base to draw upon, an AAV could then begin to provide switched services to these large users. AAVs also have the potential ability to offer the same hubbing, multiplexing and digital cross-connect capabilities that LECs provide.

(d) As described above, AAVs typically build their fiber optic loops in high density urban business districts. The fiber loops connect customers and long distance carriers through optoelectronics, usually placed on a customer's premise. Through the use of an optical multiplexer, the customer connects the AAV's facilities to its CPE. The AAV will then connect the customer, through the AAV's facilities, to an IXC switch.

ALLTEL: ALLTEL has no definition of an AAV, but is aware of the definition of AAV services contained in the rewrite of Chapter 364.

OPC: The companies are in the best position to provide this information.

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STAFF: Sections 364.335 and 364.337, Florida Statutes, provides the basis for staff's definition of an AAV. Staff believes an AAV is a telecommunications company other than a LEC that provides dedicated private line service between an entity and that same entity's facilities at another location or dedicated access service between an end-user and an interexchange carrier. Currently, AAVs provide only jurisdictionally interstate special access service. If AAVs are determined to be in the public interest, AAVs can use their broadband networks to provide the following services.

1. Intraexchange private line between an entity and that same entity's facilities; and
2. Interexchange private line between an entity and that same entity's facilities; and
3. Special Access between an end user and an interexchange carrier.

ISSUE 2: Do Sections 364.335 and 364.337, Florida Statutes, permit the Commission to authorize the provision of private line service by AAVs within an exchange area? Should the Commission do so?

INTERMEDIA: Yes. Section 364.335(3), Florida Statutes, specifically authorizes the Commission to grant a certificate or the extension of a certificate to a certified AAV for the provision of a "private line service ... without determining the existing facilities are inadequate to meet the reasonable needs of the public and without having to amend the certificate of another telecommunications company to remove the basis for competition or duplication of service." Moreover, "private line service" is defined for the purposes of the section to mean "... any point-to-point or point-to-multipoint service dedicated to the exclusive use of an end-user for the transmission of any public telecommunications service."

This authorization of competitive local private line service removes any concern that such competition violates the LEC's "franchise rights" under the statute. Prior to the revision of Chapter 364 to authorize such competition, the LECs enjoyed the statutory protection from competition with or duplication of its local exchange services. Previously, if the Commission intended to authorize another entity to provide a service that competed with or duplicated a local exchange service of the LEC, the LEC's certificate had to be amended to remove the basis of duplication or competition. Now the Commission need only find that such competitive local private line service is in the public interest.

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Section 364.337, Florida Statutes, does not address intraexchange private line service. Rather, it specifically authorizes the provision of interexchange AAV services, including non-local private line and bypass.

Yes. As developed in other position statements, it is in the public interest to allow all services contemplated for AAVs under the newly revised Chapter 364, Florida Statutes.

METROPOLITAN: Sections 364.335 and 364.337 reflect the Legislature's unambiguous intent to permit private line service by AAVs within an exchange area.

Section 364.337(3)(a) permits the Commission to authorize alternative access vendor services upon a showing that such service is in the public interest. Section 364.337(3)(a) defines AAV service as "the provision of private line service between an entity and its facilities at another location or another dedicated access service between an end-user and an interexchange carrier by other than a local telecommunications company."

Section 364.335(3) explicitly gives the Commission authority to grant a certificate to an alternative access vendor to provide private line service which is "either competitive or duplicative" of local exchange services, on a showing that the service is in the public interest.

Given recent introduction of these statutory provisions and the attendant debate, there appears to be little doubt that the Legislature intended to authorize AAVs to provide private line service which would be in competition with LECs, and therefore operating within an exchange area.

Significantly, in Section 364.01(c), (d) and (e), the Legislature has provided useful guidance to the Commission in reaching its determination whether AAV service is in the public interest.

Given the recent changes to Section 364 outlined above, the Commission should proceed to authorize AAV service within an exchange area.

MCI: Yes. Section 364.337(3)(a) specifically permits the Commission to authorize "private line service between an entity and its facilities at another location." That section contains no geographic restriction on the locations served. The statute classifies all such private line service, regardless of geographic

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or exchange boundaries, as "interexchange telecommunications services." By classifying all private line service as "interexchange telecommunications," the Legislature has clearly removed private line service from the local exchange service monopoly provisions of Section 364.335. That monopoly remains only for traditional switched local exchange service. Based on the public interest showings in this proceeding, the Commission should exercise its authority and permit the provision of all private line services by AAVs in competition with the LECs.

SPRINT: US Sprint has no position on this issue at this time.

GTEFL: The new Chapter 364, which became law on October 1, 1990, defines an alternative access vendor as follows under Section 364.337 entitled "Intrastate Interexchange Telecommunications":

(3)(a) If the commission finds the provision of alternative access vendor services to be in the public interest, it may authorize the provision of such service. For the purposes of this section, "alternative access vendor services" means the provision of private line service between an entity and its facilities at another location or dedicated access service between an end-user and an interexchange carrier by other than a local exchange telecommunications company, and are considered to be interexchange telecommunications services. (emphasis added)

(b) No person shall provide alternative access vendor services without first obtaining a certificate from the commission.

GTEFL interprets the foregoing statute as only permitting interexchange private line service between an entity's own multiple locations or the provision of access between an entity and an interexchange carrier's POP. Therefore, under Sections 364.355 and 364.337, the AAV's legal operations in Florida will be limited to dedicated interexchange service as described above and any switching functions or the provision of local exchange transport between customer locations will be prohibited by law.

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UNITED: The primary changes in Section 364.335, Florida Statutes, for the purposes of this issue, were made in Section 364.335, (3)¹, which reads in part (in legislative format) as follows:

The commission ~~may~~ shall not grant a certificate for a proposed telecommunications telephone company, or for the extension of an existing telecommunications telephone company, which will be in competition with or duplicate the local exchange services provided by any other telecommunications telephone company unless it first determines that the existing facilities are inadequate to meet the reasonable needs of the public and it first amends the certificate of such other telecommunications telephone company to remove the basis for competition or duplication of service. The commission may, however, grant such a certificate for a proposed telecommunications telephone company, or for the extension of an existing telecommunications telephone company, which will be providing either competitive or duplicative pay telephone service pursuant to the provision of s. 364.3375, or private line service by a certified alternative access vendor, ~~only~~ without determining that the existing facilities are inadequate to meet the reasonable needs of the public and without amending the certificate of another telecommunications telephone company to remove the basis for competition or duplication of services. For the purpose of this section, "private line service" means any point-to-point or point-to-multipoint service dedicated to the exclusive use of an end-user for the transmission of any public telecommunications service.

The primary change in Section 364.337, Florida Statutes, for the purposes of this issue, was the addition of Section 364.337(3), which is new and reads as follows:

(3)(a) If the commission finds the provision of alternative access vendor services to be in the public interest, it may authorize the provision of such service. For the purposes of this section, "alternative access vendor services" means the provision of private line service between an entity and its facilities at another

¹This is Section 364.335(3) in the new statute, and Section 364.335(4) in the old statute.

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location or dedicated access service between an end-user and an interexchange carrier by other than a local exchange telecommunications company, and are considered to be interexchange telecommunications services.

(b) No person shall provide alternative access vendor services without first obtaining a certificate from the commission.

The language quoted above from Section 364.335(3) first restricts the Commission from granting certificates to telecommunications companies which compete with or duplicate local exchange services. The statute then creates exceptions to this restriction. One of the exceptions is that the Commission may grant a certificate to an AAV which provides private line service without determining that existing facilities are inadequate. While this language seems clear, an element of confusion is added by Section 364.337(3)(a) which states that AAV service is the provision of private line service and is considered to be interexchange telecommunications service.²

Section 364.335(3) and 364.337(3)(a) are inconsistent unless it is assumed the legislature meant to redefine certain local exchange services as interexchange services for limited purposes. If that was the legislature's intent it is not clear from the language of the legislation.

A second interpretation is that the legislature meant to restrict AAV's to the provision of interexchange private line service.

A third interpretation is that the "interexchange" language is intended to mean that AAVs should be regulated as interexchange carriers.

A fourth interpretation is that since "private line" is defined differently in Section 364.335 and Section 364.337, and each definition is prefaced with the language "for the purposes of this section," the language of Section 364.335 applies to "private line" service as defined in that Section, and the language of Section 364.337 applies to the "private line service" defined in that Section. This fourth interpretation would apply Section

²The language in 364.335(3) is also confusing because it only permits the Commission to grant a certificate to a "certified" AAV.

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364.335 to AAV services provided between end-users locations, and apply Section 364.337 to AAV service provided between end-user and IXC locations.

The statutory language is difficult to interpret and may be in conflict, and should not be relied on to make irreversible decisions which determine substantial interests.

Even if the statutory language were clear, the Commission should not authorize AAVs to provide private line services within an exchange area. Provision of such service would allow AAVs to provide local exchange service in competition with the existing LECs. The AAVs have no requirement to serve, and would choose to serve only the more lucrative customers. Loss of the contribution provided by these customers would be detrimental to the general body of ratepayers.

SOUTHERN BELL: Amended Section 364.337, Florida Statutes, prohibits an AAV from providing services other than interexchange services. The section states that the provision of "'alternative access vendor services' means the provision of private line service between an entity and its facilities at another location...and are considered to be interexchange telecommunication services." Southern Bell reserves the right to elaborate on this issue in its post-hearing brief.

ALLTEL: No position at this time.

OPC: Yes, these statutes permit the Commission to authorize the provision of private line service by AAVs within an exchange area. The Commission should do so.

STAFF: Yes. Section 364.335, Florida Statutes, permits the Commission to authorize the provision of intraexchange private line service. The Commission should only allow AAVs to provide such services if it is found to be in the public interest.

ISSUE 3: Should AAVs be classified as a separate class of providers of telecommunications services? If so, do they require separate rules and certification?

INTERMEDIA: Yes. To the extent that AAVs do not fit neatly within any of the existing classifications it may be helpful to establish a separate classification, as the Legislature recently did. As presently configured in Florida, AAVs are most analogous to interexchange carriers since the special access services they provide carry only long distance traffic.

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Intrastate private line and special access carriers ought to be licensed as competitive carriers and allowed to fully compete in the dedicated transmission market. This means that the bypass prohibition must be discontinued for special access and that private line competition be opened up. The dominant/nondominant carrier classification would seem to logically apply as well. The rules which apply presently to nondominant interexchange carriers would appear to naturally apply to nondominant providers of the special access and private line market.

METROPOLITAN: AAVs should not be classified separately. They should be classified as interexchange carriers, and AAVs should be subject to the same or similar rules and certification requirements as other interexchange carriers. Competition among AAV and other interexchange carriers will produce self-regulation. The AAVs should be subject to regulation which fosters competition and brings additional entrants to the telecommunications market.

MCI: Pursuant to Section 364.337(3)(a), alternative access vendor services (i.e. intrastate special access and intraEAEA private line) are specifically "considered to be interexchange services." The provision of this subclass of interexchange services can be authorized by the Commission based on a public interest finding. Because these services are classified as interexchange services, the existing IXC rules and certification procedures would appear to be applicable to AAVs. However, some modifications may be necessary in subsequent rulemaking proceedings to reflect the unique nature of AAV services.

SPRINT: If the Commission determines that regulation of AAVs is in the public interest, US Sprint supports regulating AAVs in the same manner as minor IXCs.

GTEFL: The Commission's experience in previous dockets concerning cellular carriers and nonLEC PATS providers reveals the problems associated with trying to "pigeon hole" a new entrant into the market based on existing carrier classifications. All new providers in the market have certain aspects of their operations which are similar to existing participants in the industry. GTEFL feels that the rules applicable to a new entrant should be based on activities the new entrant engages in. In this case, the AAVs will be competing with the LEC for dedicated access to an interexchange carrier POP and for interexchange private line service. All other activities will be prohibited by law. Therefore, the separate rules and certification requirements applicable to the AAV should be based on the rules and requirements applicable to their competitors - the LECs.

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GTEFL is a certificated LEC providing service to all end-users within its service territory and, as such, is prohibited by statute from discriminating in favor of or against any person as to rates or service conditions or quality. In exchange for assuming this obligation of providing nondiscriminatory universal service within its service territory, GTEFL has historically been allowed to provide such service free of competition. The introduction of competition within GTEFL's service territory raises significant public interest and policy concerns. GTEFL submits that the Commission must either release GTEFL from some of its current obligations regarding universal service, carrier last resort, and other such matters or make these conditions applicable to the AAV.

The Commission, at a minimum, should categorize the AAV as a strictly regulated entity with accountabilities to the Commission for service standards, performance monitoring, rates, complaint responsibility and other tenets of both the FPSC rules and Chapter 364 requirements.

UNITED: AAVs should be classified based on the type of service they provide. If they provide interexchange service, they should meet the requirements and abide by the statutes and regulations that apply to interexchange carriers. If AAVs provide local exchange service, they should meet the requirements and abide by the statutes and rules that apply to local exchange companies. If they provide both types of services, they should be required to meet both sets of requirements, including certification requirements. This is the same requirement that is placed on local exchange companies that provide local service and also provide intraLATA long distance service. The degree of regulation for any service should be consistent regardless of what entity provides the service.

SOUTHERN BELL: Amended Section 364.337(3)(b), Florida Statutes, requires that AAVs be certificated. Section 364.337 permits different rules for AAVs. AAVs should be classified based on the services that they are allowed to provide.

ALLTEL: No position at this time.

OPC: The Citizens have no position at this time.

STAFF: Yes. AAVs should be considered a separate class of telecommunications service providers with separate rules and certification procedures.

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ISSUE 4: Are the services provided by, or potentially provided by, an AAV in the public interest and why?

INTERMEDIA: Yes. The competitive provision of dedicated transmission path services offer customers choices historically unavailable to consumers in either interstate or intrastate markets. Currently such competition exists in interstate markets and consequently a variety of services based on dedicated high capacity lines are being made available more quickly, less expensively, and at higher quality than before. It is in the public interest to extend these benefits to intrastate consumers.

The public interest is enhanced if consumers of the service are better served. For example, the services provided by an alternative access vendor greatly enhance communications reliability. Many high volume communications customers cannot, under any circumstances, afford a failure of their communications systems. Competition permits these customers to obtain access to their long distance carrier(s) through more than one company -- inter-company route diversity. This is an attractive alternative to many customers who do not prefer to put all their telecommunications eggs in one basket.

METROPOLITAN: The services which are or will be provided by the AAVs are definitely in the public interest. Consumers benefit from the reduced prices and enhanced services which result from competition in the marketplace. Should MFS determine to enter the AAV market in Florida, its digital fiber optic network will further the public interest by providing innovative customized services and enhanced telecommunications reliability. MFS's entry into the digital private line market in Florida would aid in developing an advanced telecommunications infrastructure critical to business users.

MCI: Yes. The provision of AAV services by parties other than the local exchange companies would bring consumers the benefits of competition, including network diversity and redundancy that many customers desire.

SPRINT: While US Sprint has not compared AAV and LEC services in Florida, the presence of AAVs tends to enhance incentives for LECs to incorporate advanced technology into their networks in order to provide access features and functions that are comparable to those provided by AAVs. To the extent that LECs respond to these incentives, the presence of AAVs enhances the reliability of the telecommunications network. In addition to faster incorporation of new technology and services, allowing AAV competition in Florida

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could benefit consumers by improving firms' responsiveness to customer needs, increasing consumer choices of services and services providers, and lowering prices. An additional benefit to consumers from AAV competition is the availability of diverse routing of access to assure the survivability of telecommunications services. These benefits could improve the quality and reliability of telecommunications services generally. These benefits are in the public interest.

GTEFL: GTEFL is of the opinion that AAVs are not operating in the public interest at the current time. The current rules and regulations applicable to AAV service offerings are limited to a lucrative specific market segment resulting in a loss of high revenue customers which provide a substantial subsidy to GTEFL's universal service and carrier of last resort obligations. As long as the AAVs operate in an environment absent of adequate regulatory compliance measures, the AAVs will not operate in the public interest.

GTEFL feels that it is the Commission's decision to determine the impact of such AAV competition on the following items: (1) universal service; (2) the ultimate quality of service received by customers; (3) the creation of pricing disparities; (4) the loss of subsidies; and (5) whether end-users benefit from the telephone services provided by this new breed of carrier.

In resolving these concerns, GTEFL feels that the Commission must examine the existing regulatory system and the LEC's existing rate structures, both of which are predicated upon the absence of competition within its service territory. At a minimum, GTEFL feels that the Commission must examine: (1) rate averaging/deaveraging; (2) carrier of last resort obligations; (3) universal service; (4) franchise rights and obligations; and, (5) protection of end-user customer interests.

UNITED: If the provision of service by AAVs is accomplished in a nonbiased manner, and, therefore, results in the full benefits associated with true competition, the public interest will be served. The public interest is not served, however, by competition which is introduced in an artificially restricted or biased manner that deprives the customers of all potential benefits.

SOUTHERN BELL: If, as it now appears, alternative access vendors intend to duplicate many services presently provided by LECs, and if the Commission decides that such additional competition is in the public's interest, significant regulatory reforms are absolutely necessary to ensure that such competition is based on

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economic benefits ("economic competition") and not merely differences in regulatory treatment ("uneconomic competition").

In determining whether or not AAV services are in the public interest, the Commission must balance its concern for universal service and the level of exchange service rates against its desire to foster increased competition for telecommunications services.

If the Commission determines that greater competition in this market segment is in the public's interest, proper regulatory reforms must precede the introduction of such competition. Otherwise, the result of such a determination will include unwarranted erosion of the LECs' subscriber base, loss of contribution, and consequent higher local exchange rates.

ALLTEL: No position at this time.

OPC: The provision of unswitched private line services by AAVs would be in the public interest. The provision of such services will provide customers additional choices and perhaps greater reliability for their telecommunications needs.

STAFF: Granting AAVs the authority to provide private line service provides large end users an added alternative to the LEC private line service. In addition, AAVs may provide large end users with a high quality service at comparable rates. Currently, it does not appear that granting this authority to the AAVs will adversely impact LEC ratepayers. If the services are more cost effective and economically efficient than LEC services, they may be in the public interest. Also, to the extent that they provide needed redundancy not otherwise available, the services provided by AAVs may be in the public interest.

ISSUE 5: 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?

INTERMEDIA: The services provided by Intermedia Communications of Florida, Inc. to date have been restricted to jurisdictionally defined interstate access. Thus, Florida Commission orders have not been applicable. Moreover, under Section 364.335, Florida Statutes, bypass and local transport are now specifically contemplated, and the Commission has not yet announced its policy under this provision.

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METROPOLITAN: Any service provided by MFS will be in compliance with Commission rules existing at that time.

MCI: The services defined as alternative access vendor services (i.e. intrastate special access and intraEAEA private line) could potentially violate the Commission's current policy regarding bypass. However, under Section 364.337(3)(a) the current bypass restriction should be eliminated based upon a finding that the provision of AAV services by parties other than the local exchange companies is in the public interest.

SPRINT: The present bypass restriction essentially addresses IXC-constructed bypass facilities, not bypass facilities that are owned and operated by end users. The existing bypass restriction is therefore ineffective and should be eliminated.

GTEFL: GTEFL feels that the AAVs are in violation of Order No. 16804 issued in Docket No. 810537-TP concerning the deployment of facilities to bypass the local exchange network. GTEFL feels that under the existing statutory framework, any provision or resale of local transport by the AAVs is a violation of GTEFL's franchise and state law. GTEFL further submits that, under the new Chapter, the Legislature considered the issue of local transport and decided to prohibit the AAVs from engaging in this function.

UNITED: United considers all AAV services to be bypass of LEC services. However, because the appropriate justification specified in Docket No. 820537-TP, Order No. 12765 has not been provided, United cannot determine if this bypass is uneconomical.

SOUTHERN BELL: Services that AAVs plan to provide appear to be inconsistent with orders already in effect regarding bypass. Under those orders, no IXC can bypass a LEC's network unless it can do so at a competitive price and in a more timely manner than the LEC. The IXC must first provide formal notice to the Commission of the proposed bypass prior to initiating construction of facilities. To Southern Bell's knowledge, no AAV has filed formal notice to seek authorization for such bypass.

ALLTEL: No position at this time.

OPC: The Citizens have no position at this time.

STAFF: No. AAVs are currently certificated in Florida as IXCs providing intrastate interexchange long distance service and jurisdictionally interstate private line traffic. The AAVs contend that they transport traffic that is at least 10% interstate and,

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therefore, for all traffic including intrastate, they fall under the jurisdiction of the FCC and not this Commission (FCC Order No. 89-224). Further, AAVs would like to be allowed to provide intraexchange private line and special access service. These proposed services are in violation of the bypass restriction.

ISSUE 6: 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?

INTERMEDIA: The high capacity dedicated special access lines provided by AAVs and by LECs do not pass through any device that permits the provider of the line to monitor the jurisdictional nature of the traffic carried over the facility. Currently, the only way to verify is through customer-provided data, if the customer has the means to collect it. The jurisdictional nature of the traffic could be determined by installing a switch at one end of the transmission path. The cost of providing this detection capacity would be the cost of a switch.

METROPOLITAN: At present, determination of the jurisdictional nature of an individual message is performed within a telephone switching device. Unless an AAV facility is equipped to perform switching functions, it does not have the capacity to screen traffic. An AAV can duplicate IXC or LEC facilities by installing switch and multiplexer equipment to screen calls. Switch costs are sensitive to scale. Switching devices capable of screening all calls in a typical MFS high capacity fiber optic trunk would cost about one million dollars. MFS will provide only dedicated (i.e., non-switched) carrier to carrier service, and therefore will not be screening traffic.

MCI: Absent some form of switching and recording equipment, which does not appear to be necessary for the provision of AAV services, MCI does not know how the jurisdictional nature of traffic can be determined.

SPRINT: US Sprint has no information that is responsive to this issue.

GTEFL: It is GTEFL's understanding that AAVs are not currently measuring the jurisdictional split of the traffic carried over its transmission facilities. However, as demonstrated by the direct testimony filed by MFS, this capability can be implemented by the AAVs at an average cost per system of approximately \$1,000,000.

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UNITED: The jurisdictional nature of traffic transported over switched facilities can be determined through dialed digit analysis, similar to that performed by a LEC central office tandem switch or an intelligent PBX. The jurisdictional nature of traffic transported over dedicated facilities can only be determined through the use of equivalent ancillary equipment, such as a call disposition analyzer (CDA). This type of equipment is available from numerous vendors at varying costs. United does not know which option, if either, is used by AAVs at the current time or how AAVs will/can perform jurisdictional call screening.

SOUTHERN BELL: Jurisdictional call screening is an essential requirement in the provision of AAV services. At the very least, AAV customers should provide reports that would represent a reasonable estimate as to the jurisdictional nature of the traffic AAVs carry.

ALLTEL: No position at this time.

OPC: The companies are in the best position to provide this information.

STAFF: The jurisdictional nature of traffic carried by an AAV cannot be determined. Call screening cannot be performed without switching capabilities.

ISSUE 7: Is an AAV's network configured to perform switching functions? If so, describe the switching functions it performs.

INTERMEDIA: On information and belief, only two AAVs have the ability to switch. Eastern Telelogic in Philadelphia has purchased a switch that is for the purpose of reselling long distance services. Intermedia also understands that New York Teleport has purchased two 5ESS switches to provide Centrex.

METROPOLITAN: No universal definition of "an AAV network" exists. AAV networks can be configured to perform switching functions. MFS does not provide switched services in any of the ten cities nationwide where it presently provides service, and MFS does not contemplate providing switched service in Florida.

MCI: MCI has no knowledge concerning the current operation of AAV networks, although it does not appear that switching is necessary to the provision of alternative access vendor services as defined by Section 364.337(3)(a).

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SPRINT: US Sprint has no information that is responsive to this issue.

GTEFL: At the current time, GTEFL is not aware of any instance in Florida where an AAV is directly providing switching functionality. However, that capability is present and can be technically utilized in the near future. For example, Teleport has purchased two 5ESS switches which can be used to perform switching functions. Furthermore, MFS is seeking the ability to have LEC access unbundled which will result in switching functionality being obtained from the LEC while the AAV selectively deploys interoffice circuits.

UNITED: While AAVs in other parts of the nation are utilizing switching equipment to expand the scope of services they can offer, United is unaware of any instances within the State of Florida where an AAV has incorporated switching equipment into its physical network. Switching functions can be performed, however, without a physical switch by routing traffic through the switching equipment or intelligent PBX of an affiliate or customer. Given adequate capacity and functionality, this configuration would allow the AAV to provide a full spectrum of services identical to and in competition with those offered by the LEC.

SOUTHERN BELL: This is unknown at present, but certainly the potential exists for these vendors or their customers to provide switching functions. The performance of switching functions would create a significant and serious erosion of LEC switched service revenues thus leading to increased upward pressure on local exchange service rates.

ALLTEL: ALLTEL is not familiar with the configuration of an AAV network.

OPC: The companies are in the best position to provide this information.

STAFF: No. AAVs do not currently perform switching functions in their networks.

ISSUE 8: 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?

INTERMEDIA: The only AAV currently active in Florida is Intermedia, which does not provide jurisdictionally intrastate

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service. Intermedia has not provided any service that is local exchange service or otherwise infringes on a LEC's franchise rights.

As already noted in the response to Issue 2, the competitive provision of local private line service by certified AAVs will not infringe on the franchise rights of the LECs. New Section 364.335(3) expressly authorizes the provision of competitive local private line without having to amend the LEC's certificate.

METROPOLITAN: No. The term "local exchange service" contemplates, above all, a switching and exchange function. MFS is not contemplating performing switching functions in Florida. Even if it were, an AAV authorized to perform dedicated services would have to receive Commission authorization prior to providing switched services. Therefore, the provision of AAV services, as contemplated in this proceeding, will not duplicate local exchange services and will not infringe upon LEC franchise rights.

MCI: No. Pursuant to Section 364.377(3)(a), alternative access vendor services are considered to be interexchange telecommunications services, and therefore do not constitute local exchange service and would not infringe on the franchise rights of the LECs.

SPRINT: Florida Statutes Section 364.337(3)(a) provides in relevant part that "alternative access vendor services . . . are considered to be interexchange telecommunications services." To the extent that AAV service features, functions and flexibility differ substantially from similar LEC access services, they do not necessarily compete with LEC access services. To the extent that AAVs and LECs offer substitute services, they offer competing services.

GTEFL: Yes. Chapter 364.02 sets forth an expansive definition of telecommunications company and telephone facility which includes any activity which makes use of a telephone facility. This broad definition of a telecommunications company encompasses any provision of telephone service within the State of Florida. Furthermore, the new Chapter 364 explicitly limits the permitted operations of AAVs to interexchange service. GTEFL submits that the operations of the AAVs will infringe on the franchise rights of the LECs as operations currently exist.

UNITED: This issue has been dropped.

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SOUTHERN BELL: Amended Section 364.02(7), Florida Statutes, provides that anyone "offering 2-way telecommunications service to the public for hire within the state by the use of a telecommunications facility" is a telecommunications company. According to this definition, AAVs are telecommunications companies within the meaning of the Florida Statutes. In addition, AAVs are providing or intend to provide local exchange service in Florida.

(b) Unless an AAV applies for a certificate of public convenience and necessity as required by Section 364.337(3)(b), Florida Statute, and unless the Commission grants such a certificate based upon an appropriate finding pursuant to Section 364.337(3)(a), Florida Statutes, then an AAV's provisioning of local exchange service would violate the Florida laws pursuant to which the LECs' certificates were granted.

ALLTEL: Yes. As ALLTEL understands the services described in prefiled testimony and pleadings. AAVs are providing telecommunications services.

OPC: AAVs are providing telephone service within the meaning of Chapter 364, Florida Statutes.

STAFF: Yes. Section 364.335, Florida Statutes, allows AAVs to provide intraexchange private line. Historically, intraexchange private line has been considered a local exchange service. AAVs that provide intraexchange private line will be providing what is typically considered a LEC provided service. However, Chapter 364, Florida Statutes, allows several entities to provide services that are normally LEC services, such as STS and PATS providers.

ISSUE 9: What effect will the provision of services by AAVs have on the local telephone rates of certificated 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?

INTERMEDIA: The provision of competitive intrastate services by AAVs should have no short or long term negative effects on local telephone rates or universal service. Since divestiture, the local exchange monopoly telephone companies have used their considerable resources to consistently resist competitive alternative telecommunications providers. In the process of resisting, this Commission has been repeatedly told by the LECs that competition will drain revenues and contribution resulting in upward pressure on local rates and negative effects on universal service. A brief

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review of recent history of competition paints a much different picture.

Since divestiture, the LECs have faced increased competition from different alternative telecommunications providers. In addition, the LECs have bypassed their own switched services, which provided contribution in support of universal service, with private line services that provided little or no contribution. In spite of the LECs bypassing themselves, the apparent loss of contribution, and increased competition from other sources, basic local rates and universal service have not suffered. On the contrary, one can easily reach the conclusion that competition has benefitted Florida's telecommunications users.

In the Florida Public Service Commission's December 1989, Report on Competition to the Florida Legislature, the Commission reported that between November 1983 and July 1989, the percentage of Florida households with telephones dramatically increased from 85.5% to 93.1%. And, rates for basic local telephone service remained among the lowest in the country.

The record in this docket will show that the market for AAV services is extremely small. Southern Bell responded in interrogatories that their 1989 hi-cap intrastate leases were only 26 hundredths of a percent of their total intrastate revenues. Considering that the LECs are formidable competitors, it is difficult, if not impossible, to imagine even under the best market scenario, that AAVs could penetrate such a small market to such a degree as to impact overall LEC earnings and local rates.

METROPOLITAN: The provision of services by AAVs will have little, if any, effect on telephone rates in general. Where the AAVs compete with the LECs on specific services, such as special access or private line services, competition will provide consumers with the benefit of lower rates. MFS believes that these lower rates will result in market growth. Therefore, even supposing that AAVs were to dominate special access and/or private line services, LEC revenues would not decrease significantly and, because of the larger market, could increase. Thus, there should be little or no negative financial impact on universal service. Supposing that there was an impact, however, the Commission could establish a contribution mechanism whereby the AAVs, as well as the LEC, could contribute to a universal service fund based on a nondiscriminatory predetermined formula.

MFS believes that the 1988 BellSouth Revenues support this conclusion. MFS estimates that intraLATA special access and

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private line revenues represent less than 2% of total BellSouth revenues. AAVs can be expected to control only a small portion of the special access market. Nevertheless, even supposing that an AAV could dominate that market, the amount of affected BellSouth revenues would represent a minuscule percentage of total BellSouth operating revenues. Under this worst case scenario, the LEC would be hard pressed to justify a rate adjustment for its other services. Moreover, Florida is a growing market, and even supposing a loss of market share, there is no reason to believe that the LEC would experience an overall loss of revenue.

MCI: MCI has seen no evidence that the provision of alternative access vendor services need have any effect on the local telephone rates of certified LECs. MCI has also seen no evidence that special access or private line services have any adverse effect on universal service.

SPRINT: US Sprint has no information about the impact, if any, of access competition on local telephone rates in Florida. US Sprint has not performed any studies to determine what, if any, effect special access or private line services have had on universal service, and has no information on what means can be developed to mitigate any such effects.

GTEFL: The effect of AAVs on the telephone rates of LECs cannot be determined until the Commission establishes the appropriate rules and regulations applicable to AAVs. However, as a general statement, AAVs' target market areas only include large business customers and, therefore, this form of competition eliminates high volume usage which subsidizes rates for other customers. Furthermore, GTEFL's existing regulatory environment has not changed enough to allow GTEFL to compete with the AAV offerings. The AAV can offer a simpler rate structure, individual variable contract terms, volume discounts, and package services together with little, if any, regulatory constraints. The effect of AAVs on the LECs will be decreased if the LECs are granted the same flexibility as any other competitor to change its rates when competitive services are involved.

UNITED: The provision of service by AAVs will create yet another source of upward pressure on the rates of other services provided by the LEC. AAVs will target the most profitable segment of the communications market (high usage business customers) which provides a substantial contribution to the maintenance of low local service rates. More specifically, as the interstate and intrastate toll traffic generated by this customer segment is removed from the LEC's switched network and migrated to the AAV's dedicated

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facilities, not only will significant revenue streams necessary for the maintenance of low local service rates be lost, but also the jurisdictional assignment of cost to the interstate jurisdiction will be reduced while the allocation of cost to the intrastate jurisdiction will be increased. As a result, a greater portion of the cost of the network will be shifted to local service. Additionally, as the scope of the services offered by AAVs expands more fully into traditional basic exchange offerings and LECs evolve as providers of last resort in the local markets as well as the toll markets, average rates can not be maintained.

SOUTHERN BELL: (a) AAVs target their efforts at large users in well-defined urban areas which currently provide a significant source of contribution to the common costs of maintaining the local exchange network. Erosion and loss of this contribution will necessarily lead to higher local telephone rates than would otherwise occur.

(b) There is a market need for dedicated services that provide voice or data communications. To the extent that LEC-provided special access and private line services replace usage-based toll services, they do not provide the same levels of contribution as do switched toll type services. On the other hand, if special access or private line services are provided by an AAV, there is not contribution towards universal service.

(c) If these services are recognized as competitive and allowed by the Commission, steps must be taken that will allow local exchange companies to compete fairly for large business users. There may even be a need to develop new alternatives to support universal service objectives. The goals of such alternatives should be to eliminate service subsidies provided to those without a financial need for such subsidies and to spread the remaining financial support of universal service objectives among all those providing telecommunications services in Florida including AAVs.

ALLTEL: Any service which diminishes the customer base of a LEC will eventually force increases in rates paid by remaining customers.

OPC: The provision of services by AAVs should have no effect on the local telephone rates of certified LECs. Private line services provided by LECs have traditionally provided no contribution to the general body of ratepayers, and therefore competition for these services should not adversely affect the general body of ratepayers.

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STAFF: In the short run, local telephone rates may increase slightly as LEC customers migrate from the LEC network to AAVs, reducing the contribution to local rates. Any effects on universal service may be mitigated through an appropriate mechanism to fund lifeline type rates. On the other hand, LECs may be able to recover any lost contribution through price increases for discretionary LEC services (custom calling, etc.) or through increased usage of discretionary services through promotion and/or price decreases.

In the long run, if a substantial number of LEC customers migrate to AAV facilities and the LEC facilities are not reusable, local rates may be adversely affected. Again an explicit fund for local service may be the best option.

ISSUE 10: 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?

INTERMEDIA: Competition for special access services, like competition for almost any good or service, promotes efficient pricing, efficient production, product quality and innovation. The essential ingredient to each of these positive economic results is consumer choice. With choice, the balance of power in the bilateral negotiations shifts from the producer to the consumer. The absence of choice allows the producer to provide service on a "take it or leave it" basis. Competition, however, is unforgiving of such performance. If one supplier is not delivering the good or service in the most efficient manner or at the highest level of quality, competition assures that this supplier will not survive. This threat causes all suppliers to conform to the demands of consumers.

The direct beneficiaries of AAVs' services (or the services of LEC special access services) obviously are the customers with the telecommunications demand sufficient to justify high capacity circuits. These are generally businesses, governmental units, public utilities, educational institutions and other telecommunications carriers. The indirect beneficiaries of a competitive telecommunications industry are the customers, citizens, ratepayers and students of the respective institutions which use the telecommunications facilities.

METROPOLITAN: Competition will promote efficient pricing, thereby decreasing the cost to the consumer. This in turn will increase demand. At the present time, the AAVs' actual customers are a fairly small, sophisticated group of customers. Ultimately, the

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general public will benefit indirectly from the lower costs caused by competition.

MCI: The economic benefits of competition include the incentive to provide services desired by customers at the lowest possible price. The customers of AAV service providers would be the direct beneficiaries of AAV services. Telephone users in general would be the indirect beneficiaries of increased competition in telecommunications resulting from the availability of AAV services.

SPRINT: Please refer to US Sprint's response to Issue 4 above. Because AAVs offer services to LECs and IXCs in addition to large customers, the general body of telecommunications users in Florida will receive the benefits of AAV competition. If access service becomes technologically more advanced and more competitively priced, all users of access will benefit.

GTEFL: The economic benefits from the provision of AAV services are large business customers and IXCs.

UNITED: In a truly competitive environment, competition drives technological innovation, improved service quality and competitive pricing of services. However, it is questionable whether there are any benefits of competition when not all competitors have the same freedom to set prices and enter or exit markets. Large or high volume telecommunications users, such as banks, brokerage houses, credit card processing firms, credit bureaus and hotels, as well as select medium sized and low volume businesses which are prime candidates for shared tenant-type services and toll aggregation arrangements are the beneficiaries of AAV services. Also, IXCs will benefit from reduced rates paid for service through certain AAV-initiated private line configurations. However, to the extent that AAVs duplicate the LECs' networks and that the aggregate total network investment becomes greater than if provided only by the LEC, the price of all IXCs' access services may increase. Lastly, the AAV will benefit from any revenues derived from its business activities.

SOUTHERN BELL: (a) Economic benefits, in terms of lower charges, would be realized only by large customers that reside in specific urban areas and who have requirements for DS1 and DS3 services. On the other hand, the general body of ratepayers, and particularly residential ratepayers, would lose a source of contribution to the common costs that supports the local exchange network and universal service.

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(b) Large customers and IXCs who have access to these AAV services will be the beneficiaries.

ALLTEL: No position at this time.

OPC: Competition from AAV should benefit those companies or persons requiring high speed special access or private line services.

STAFF: The potential economic benefits of competition for the provision of high-speed special access or private line services are enhanced telecommunications infrastructure, reduced prices for users of such services and more efficient provision of such services.

The direct beneficiaries of efficiently provided AAV services are the users of such services. The indirect beneficiaries of efficiently provided AAV services are the downstream customers of the users of AAV services and perhaps the economy as a whole.

ISSUE 11: What companies are presently providing AAV service in Florida and where are they located?

INTERMEDIA: Intermedia is the only company within Florida currently providing AAV services, which are limited to interstate special dedicated transmission path services in Tampa and Orlando.

METROPOLITAN: MFS does not provide AAV service in Florida. MFS is unaware of any company currently providing intrastate AAV service in Florida.

MCI: MCI has no knowledge of the current or proposed operations of AAVs, and therefore no position at this time.

SPRINT: Intermedia Communications of Florida, Inc. headquartered in Tampa, Florida.

GTEFL: In GTEFL's service territory, ICI and Tampa Electric Company are both operating fiber optic networks. In addition, Jones Intercable has filed an application with the Commission requesting the ability to provide local transport. In regard to Tampa Electric Company, this entity provides transport facilities to ICI and has also established a large system in Lakeland, Florida without any association with another carrier.

UNITED: To the best of United's knowledge, Intermedia Communications of Florida, Inc. (ICF), which is based in Tampa,

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Florida, is the only company actively providing service as an AAV in Florida. ICF has operations in the Orlando area, is constructing facilities in Miami and St. Petersburg and has a facility in the planning stage in Jacksonville. Metropolitan Fiber Systems of Miami, Inc. (MFS), based in Miami, Florida, is currently constructing facilities in the Miami area which, according to its application, will constitute the company's total serving area.

SOUTHERN BELL: Intermedia Telecommunications of Florida, Inc. has entered the Orlando and Tampa service areas and has also announced that it will enter the Miami and Jacksonville areas for the provision of this service. In Miami, Intermedia has negotiated a right-of-way contract with Dade County and while it does not yet appear to be providing any services, it has begun contacting customers about the services they intend to offer. Additionally, MFS-Miami, Inc. and Teleport Communications (a subsidiary of Merrill-Lynch) have announced their intentions to provide AAV service in the Miami market.

ALLTEL: No position at this time.

OPC: The companies are in the best position to provide this information.

STAFF: Currently there are no companies in Florida providing AAV service. The potential to provide AAV service is associated with any company that utilizes a transmission network to provide some type of service. (i.e. cable television companies, private industry and utilities)

ISSUE 12: What services, if any, should AAVs not be allowed to provide? Explain why each service, if any, should be disallowed.

INTERMEDIA: AAVs should be allowed to provide all services authorized under statute.

METROPOLITAN: MFS has not yet formulated an opinion as to what services, if any, AAVs should not be allowed to provide and reserves the right to discuss this matter at a later date.

MCI: Competitive providers of telecommunications services, including AAVs, should be allowed to provide any service that does not infringe the local exchange companies' statutory monopoly on switched local exchange service.

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SPRINT: AAVs should not be precluded from providing telecommunications services which are in the public interest, lawful and consistent with Commission policies.

GTEFL: In Florida, pursuant to law, AAVs should not be allowed to provide any switching functionality of any sort nor the provision of any dedicated exchange transport. Furthermore, the AAVs should not be allowed to bypass the LECs' access facilities for premise-to-POP transport unless the AAV can meet the requirements of the Commission's bypass restriction.

UNITED: The provision of services by AAVs should be restricted by the rules and regulations which apply to their classification of carrier. If AAVs are classified as IXCs, provision of service should be restricted to that allowable for IXCs. If AAVs are classified as LECs, provision of service should be restricted to that allowable for LECs.

SOUTHERN BELL: Amended Section 364.337, Florida Statutes, prohibits an AAV from providing services other than interexchange services. Section 364.337(a) states that the provision of "alternative access vendor services" means the provision of private line service between an entity and its facilities at another location...and are considered to be interexchange telecommunications services." AAVs should not be allowed to provide local exchange services unless the Commission makes an appropriate finding pursuant to Sections 364.335(3) and 364.337(3)(a), Florida Statutes.

ALLTEL: No position at this time.

OPC: AAVs should only be allowed to provide private line, or point-to-point, unswitched services.

STAFF: Sections 364.335 and 364.337, Florida Statutes, specifically state that AAVs are allowed to provide dedicated private line and special access services only as outlined in staff's position on Issue 1.

AAVs are prohibited from providing intraEAEA services over their own facilities until January 1, 1992. In addition, AAVs' networks should not be configured to perform any switched service, unless provided under different certification from this Commission. This includes, but is not limited to, Central office, PBX, Hybrid Key and Key type systems. Further, AAVs should not be permitted to utilize transmission facilities such as a digital access cross-

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connect system (DACs) that might be construed as circuit or channel switching.

ISSUE 13: What actions, if any, should be taken by the Florida Public Service Commission in order for LECs to compete with AAVs?

INTERMEDIA: No action appears to be necessary. LECs are competing vigorously at the present time in the interstate special access market. In the intrastate market, the Florida Commission already permits the LECs to establish contract rates to meet competitive situations. It would be difficult to fashion a more flexible approach. However, Intermedia is not opposed to the changes as suggested by Staff in their modified response to Issue 13, i.e. have the LECs develop banded rates and eliminate contract service arrangements.

Intermedia believes that the intent of the new Florida statutes is clear and will provide the necessary guidance in developing rules for competition. Under these statutes, the Commission is encouraged to allow cost-effective technological innovation and competition where the public benefits. All competitors should be treated fairly and anticompetitive behavior prevented. Monopoly services should not subsidize competitive services. Monopoly services should be available to all competitors on a nondiscriminatory basis. Intermedia stands ready as a willing contributor to any process that achieves these goals.

METROPOLITAN: MFS believes that any modification of the Commission's current regulation of LECs would be premature, because any benefits of competition which would exist by allowing AAVs into the dedicated market could be easily extinguished by the LECs if the LECs were allowed to utilize the many advantages they have as a result of their monopoly position in the provision of switched and private line services.

AAVs face a large number of unequal conditions in entering into competition with the LECs. LEC monopoly advantages include existing rights-of-way, access to buildings, and existing cable and conduit. AAVs, in sharp contrast, must incur substantial costs in order to obtain these necessities.

As a result of their historic monopoly status, LECs also enjoy the advantages of a ubiquitous customer base, an ability to be a full service carrier offering switched and dedicated services, an extremely favorable cost of capital resulting from the LECs' guaranteed rate of return on investment, and deep seated customer loyalty.

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Due to these advantages, MFS, like other AAVs, will, of necessity, have to compete with the LECs in circumstances in which the LECs unquestionably have innumerable inherent advantages as a result of their monopoly position. Therefore, MFS believes that the public will best be served by the Commission if it allows competition at this time without any change of its regulatory policy toward the LECs.

MCI: None. The Commission has previously granted LECS the ability to engage in Contract Service Arrangements (CSAs) and to provide service on an Individual Contract Basis (ICB). These mechanisms currently give LECs the flexibility to compete with AAVs. No further changes in regulatory treatment are required unless and until the AAV industry develops to the point that one or more specific LEC services become subject to effective competition within the meaning of Section 364.338.

SPRINT: US Sprint has no position on this issue at this time.

GTEFL: The Commission should allow the LECs to operate under the same terms and conditions as are applicable to the AAVs. The Commission has two options. First, the Commission can free the LECs' provision of interexchange transport from strict regulation in order to be in synch with AAV operations. Second, the Commission can bring the AAV under strict regulation under the same terms and conditions as are applicable to the LECs.

UNITED: Competitors providing the same service should be subject to the same degree of regulation. Requiring a greater degree of regulation for one competitor gives the other competitor(s) an undue advantage.

Two major advantages enjoyed by AAVs are that they have no obligation to serve and their prices are not regulated. LECs are required to serve or stand ready to serve all customers and potential customers throughout their service territory. In contrast, AAVs may selectively serve only those customers they choose to and set their rates without regulatory review.

The LECs who must compete with AAVs should be given the same degree of freedom to set rates and offer services to particular customers. The optimal means of providing such equity is through the detariffing of private line and special access services. Doing so would allow pricing flexibility, ease of entrance and exit from select market segments and expedited response time.

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Further, to the extent that LECs are encountering competition because a service or group of services are overpriced, such as in the toll and access markets, the LEC should be able to reduce the rates for these services and allowed to recover the shortfall from other areas of the business which are less vulnerable to competition. If LECs are constrained by averaged priced tariffs, they lose all winners and win all losers. Specifically, when the LEC's costs are low but it is forced to deal with a price that is based on average cost, the LEC will most probably lose the low cost customers. When the LEC's costs are higher than its average price, the LEC will win all of the high cost customers. Further, when an AAV's costs are higher than the LEC's price, the AAV will subscribe to LEC services to supplement its networks. Overall, the current restrictions will cause the LEC to always be the provider of last resort while the AAV will enjoy the best of both scenarios.

The revenue impact of allowing LECs to respond to competition will be significant. In the case of switched and dedicated services, for example, the revenues to be recovered will not only include those lost to competitors, but will include those lost due to migration from the higher priced switched access to the reduced special access and due to the downward adjustment of switched access rates to retain the customer base and minimize further migration.

SOUTHERN BELL: If AAVs are allowed to provide toll or access services that LECs provide, the LECs must have the flexibility to meet these competitive pressures as they develop and not after large customers have already left the local exchange network. Through the elimination of rate imbalances inherent in the current regulatory framework, the Commission would provide LECs a means better to deal with these competitive pressures.

The Commission should take steps to ensure that the regulatory process does not work to disadvantage LECs. Where services may be provided by an AAV, LECs need regulatory flexibility to compete with those services. Tariffs that provide pricing flexibility are one important method through which this goal can be accomplished.

Establishment of geographic specific rates would also be an appropriate step. In addition, LECs ought to have the same filing requirements enjoyed by AAVs for their services. At a minimum, the Commission should allow LEC to have individual customer-based pricing for the full range of services competitive with those that an AAV may offer. Furthermore, contrary to the position set forth by Staff, the Contract Service Arrangement (CSA) must be continued

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in order to allow the LECs to meet the various network requirements of customers.

ALLTEL: ALLTEL has no specific recommendation but believes that as a general proposition persons providing like services should be subject to the same rules and regulations.

OPC: The Citizens have no position at this time.

STAFF: The LECs should be allowed to develop Commission approved banded rates. The LECs should be able to individually price services within the bands depending on the alternatives available to customers. Contract service arrangements on private line and special access should be eliminated. The Commission should eliminate interexchange intraLATA private line pooling and restructure intraexchange private line by January 1, 1992. Further, the Commission should develop a separate set of rules and regulations for AAVs (based upon Staff's definition).

ISSUE 14: 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?

INTERMEDIA: No. The dedicated transmission path provider -- be it AAV or LEC does not have capability to block calls. Moreover, no dedicated transmission path provider has independent knowledge of the nature of the traffic sent over the dedicated transmission path.

METROPOLITAN: MFS's existing AAV networks nationwide do not have a call blocking capability. Call screening and blocking is a switching function, and MFS's networks are not equipped to perform switching functions. MFS relies upon the carriers (IXCs or LECs) for whom they transport traffic to perform all required switching functions, such as call screening and required blocking.

MCI: MCI does not understand how an AAV (i.e., a company providing intraEAEA private line or intrastate special access) would be engaged in the completion of unauthorized calls.

SPRINT: US Sprint has no information that is responsive to this issue.

GTEFL: GTEFL is of the opinion that this issue should be answered by the AAVs. GTEFL does not have sufficient information within its possession to give a detailed answer to this inquiry. However,

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based on the fact that AAV currently acts as a transport facilitator and does not measure or manipulate individual calls, it would appear that the screening responsibility would have to rest with either the IXC and/or the end-user.

UNITED: It is United's belief that without switching capability, screening and blocking cannot be performed by AAVs to identify or prevent the transport of unauthorized traffic. United has no knowledge of the procedures that AAVs use to regulate this unauthorized transmission.

SOUTHERN BELL: AAVs should follow the existing orders for completion of unauthorized traffic. The two AAVs currently doing business in Florida are certificated as interexchange carriers and should comply with existing orders that are relevant to their services.

ALLTEL: No position at this time.

OPC: The companies are in the best position to provide this information.

STAFF: No. Blocking cannot be performed by an AAV without switching capabilities. The procedures AAVs' currently use to regulate unauthorized transmission over their facilities are customer claims that their interstate usage will be 10% or greater or in some cases actual usage data from the customer.

ISSUE 15: What costing methodology do AAVs use in developing ICB (Individual Cost Basis) rates for DS-1 and DS-3 services?

INTERMEDIA: Intermedia prices are market driven. The LECs are obviously the dominant firms in the industry and the fringe firms will naturally have to conform to the price leadership exercised by the dominant firm.

METROPOLITAN: In developing ICB rates, MFS will analyze the competition and follow the price leader. MFS will likely never have sufficient market power to price above the competition.

MCI: MCI has no knowledge of the current or proposed operation of AAVs, and therefore no position at this time.

SPRINT: US Sprint has no information that is responsive to this issue.

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GTEFL: GTEFL is of the opinion that this issue should be answered by the AAVs. GTEFL does not have sufficient information within its possession to give a detailed answer to this inquiry. However, while the costing methodology that the AAVs utilize is unknown, it appears that costs do not serve as the basis for determining prices. Instead, it appears that the AAVs' costs create the floor with the LEC access rates as the ceiling. Based on market experience, it appears that the AAVs set prices to customers on an individual basis discounted off the LEC access rates and somewhere above the AAVs' cost floor.

UNITED: United has no position on this issue.

SOUTHERN BELL: The cost methodology approved by the Commission, in Docket No. 820400-TP, established guidelines for LECs to use in determining the incremental costs associated with providing dedicated services in Florida. All providers of dedicated services should use this methodology for determining cost of service.

ALLTEL: No position at this time.

OPC: The AAVs would have this information, if it is available at all.

STAFF: AAVs do not follow a traditional type of costing methodology. Their rates are determined by competitive pricing in the AAVs' operating areas.

ISSUE 16: Will AAVs have an effect on the reliability of the telecommunications infrastructure and the provision of redundancy and diversity?

INTERMEDIA: Yes. These attributes are indeed the driving forces behind the emergence of this market. Spreading the risk of a telecommunications failure is a key objective for most dedicated transmission path customers and complete telecommunications diversification occurs by contracting with more than one company for access to the outside world. Moreover, access through dedicated lines assures capacity on demand -- any time and at all times. The public network cannot provide this level of service. For those customers who desire (or must have) route diversity the services provided by the LEC and the AAV are indeed complimentary. Instead of displacing anything, the AAVs service adds to the total demand for service.

METROPOLITAN: The MFS fiber optic facilities will offer diverse routing and redundant electronics. The ring-star network

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architecture used by all MFS networks incorporates state-of-the-art fiber optic and digital transmission technology.

MCI: AAVs should have a positive impact on the reliability of the telecommunications infrastructure by providing additional network facilities which will contribute to overall redundancy and diversity.

SPRINT: As discussed above in US Sprint's response to Issue 4 above, the reliability of the telecommunications network is enhanced to the extent that LECs respond to incentives to incorporate advanced technology into their networks comparable to the features and functions provided by AAVs. Specifically, AAV competition will provide an incentive to speed the introduction of features and functions such as route diversity, self-healing ring technology and 24 hour alarm and surveillance of point-to-point facilities. Thus, AAV competition could enhance the reliability of the telecommunications infrastructure and increase the availability of route diversity and redundancy.

GTEFL: Yes. Anytime that competitive forces are present in the telecommunications marketplace, there are positive effects upon the technical, human, and economic components of the infrastructure. The development of competition has prevented an option to the end-user for insuring that their telecommunications services can survive any type of interruptions. This marketplace demand has created high levels of reliability as well as various forms of physical route diversity and electronics redundancy that are generally referred to as "survivability." AAVs, like the LECs, have listened to the demands of the marketplace and have responded to these needs with technical and distribution infrastructure alternatives. However, unlike the LECs which must be the providers of last resort to all customers, the AAVs have not had the burdens of capital recovery and regulatory compliance to bear in responding to these survivability needs.

UNITED: Given any physical network, duplication in the form of redundancy and diversity will increase the reliability of that network. However, United questions whether the additional reliability that will be gained outweighs the additional costs that would be incurred as a result of duplication of resources.

SOUTHERN BELL: In terms of the local exchange network infrastructure, AAVs will not contribute to its reliability, redundancy or diversity. Efficiencies of technology and economies of scale are inherent in a reliable local exchange network providing redundancy and diversity. AAVs, on the other hand,

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tailor their networks for a well defined and limited group of customers.

Southern Bell recognizes the network attributes of reliability, redundancy and diversity as essential components of universal service, important to all customers and, therefore, incorporates their provision into its network as an overall strategy. This strategy is complemented by today's technologies, which integrate the provision of redundancy and diversity with the primary routed facilities in an economical, efficient and reliable manner.

ALLTEL: Yes.

OPC: Yes, the presence of AAVs should increase the reliability of the telecommunications infrastructure and the provision of redundancy and diversity.

STAFF: AAVs will have both a positive and a negative effect on the reliability of the telecommunications infrastructure. On the positive side the presence of AAVs will enhance incentives for the LECs to incorporate the most advanced technology in their networks to provide their customers with the most efficient dedicated service. The negative impact on the telecommunications infrastructure would be the LEC's continued responsibility of being the Carrier of Last Resort. With this responsibility, the LEC's need for infrastructure facilities may vary depending on the customers of an AAV. This may cause some traffic loading problems for the LEC.

ISSUE 17: What method, if any, should the Florida Public Service Commission use to monitor and control cross-subsidization?

INTERMEDIA: Adopt MCI's position.

METROPOLITAN: The best way to diminish the ills of cross-subsidy is to give fledgling telecommunication providers, such as MFS, the regulatory flexibility they need to make the marketplace competitive.

MCI: Under Section 364.338, if the Commission determines that a specific LEC service is subject to effective competition, it has the responsibility and authority to control cross-subsidization of that service by (i) requiring that the service be provided by the LEC through a fully separated subsidiary or affiliate, or (ii) by establishing regulatory safeguards if the service is allowed to be offered on a nonseparated basis. One set of safeguards which would

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help to control cross-subsidization would be to set prices for all LEC services based on the cost of the underlying network service components ("building blocks"); to require that monopoly building blocks be priced the same whether offered to a third party or used in the provision of a LEC service; to unbundle services to the maximum extent feasible; and to allow resale of all LEC services.

SPRINT: The Florida Public Service Commission should continue to require incremental cost studies for the services of dominant multi-product firms. By requiring incremental cost studies for these services, the Commission can ensure that the rates for these services recover their incremental costs plus a reasonable contribution to the joint and common costs of the firm.

GTEFL: It is GTEFL's position that the Commission already has in place the necessary mechanisms to monitor and control cross subsidization through the utilization of Commission Rule 25-4.004, Fla. Admin. Code. The foregoing rule section requires the use of the methodology contained in the private line cost manual when private line rates are changed.

UNITED: United believes that the development and use of incremental costs, which United defines as the additional cost to the firm of supplying a service, is the best mechanism available to monitor and control cross-subsidization. An incremental cost study produces costs that are directly attributable to providing the service. It includes those costs associated with the change in quantity supplied while excluding costs associated with the production of other services as well as those incurred in common for some subset of the services supplied. Incremental costs do not vary with the level of output. If the revenues derived by a competitive service are greater than the incremental costs identified by the appropriate study, cross-subsidization can not occur. Utilization of incremental costs ensures that the buyers of competitive services bear the costs imposed by them and that no portion of these costs are shifted to the customers of monopoly services.

SOUTHERN BELL: The Commission requires the use of the cost methodology approved in Docket 820400-TP by LECs when they develop incremental costs for dedicated services. All providers of dedicated services should use the same methodology for determining cost of service. Use of this cost methodology will ensure there is no cross-subsidy. A simple means of ensuring that there are no cross-subsidies would be to require new cost studies, based on this methodology, to be submitted periodically by all providers.

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ALLTEL: No position at this time.

OPC: The best method to reduce the threat of cross subsidization is to require the use of fully separated subsidiaries for the provision of competitive services. The companies should have the burden to show why and how cost allocation systems would leave regulated ratepayers better off than would the use of fully separated subsidiaries. If the Commission allows the use of cost allocation systems, yearly audits of all cost allocations to and from all affiliated companies, as well as between regulated and nonregulated services provided by the regulated company, should be conducted.

STAFF: The best method to reduce the threat of cross-subsidization is to require the use of separate subsidiaries. However, requiring separate subsidiaries in general may not be economically efficient, and in particular is not appropriate for regulated services. Appropriate cost studies filed in a timely manner combined with accounting safeguards are the most reasonable method to monitor for cross-subsidization for regulated services. Accounting safeguards alone may not be sufficient to guard against cross-subsidization.

ISSUE 18: In light of the changes to Chapter 364, Florida Statutes, should the Commission change its bypass restrictions?

INTERMEDIA: Yes. The Commission should remove the bypass restrictions as soon as possible.

METROPOLITAN: The recent changes to Chapter 364, Florida Statutes, contemplates that the Commission will change its bypass restrictions. The legislature's recent changes to Section 364.335(e) explicitly deleted the requirement that bypass facilities could be built only after a finding that the LEC facilities were inadequate to meet the reasonable needs of the public. Section 364.335(3) now provides the Commission with authority to grant a certificate to any alternative access vendor providing private line service upon a finding that the service is in the public interest.

Section 364.337(3)(a), as recently altered by the legislature, gives the Commission the authority to grant a certificate to an AAV and regulate an AAV as if it were an interexchange company providing interexchange telecommunications services.

Therefore, not only is there no statutory bar prohibiting the Commission from changing its bypass restriction, but the recent changes to Sections 364.335(3) and 364.337(3)(a) appear to require

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the Commission to alter its bypass restriction in order to foster competition by permitting Florida alternative access vendors to provide private line services.

MCI: Yes. The adoption of Section 364.337(3)(a) represents a new legislative policy under which the Commission is specifically authorized to permit the "provision of. . .dedicated access service [i.e. facilities bypass] between an end-user and an interexchange carrier by other than a local exchange telecommunications company" and under which such "dedicated access service" is considered to be an "interexchange telecommunications service" not subject to the local exchange telephone company monopoly. The Commission should eliminate its bypass restrictions based on a finding in this docket that competition for dedicated access is in the public interest, and that the current bypass restrictions are no longer necessary to protect the public interest. When the bypass restriction is eliminated, certified IXCs should be permitted to provide such alternative access facilities without the necessity for a separate AAV certificate.

SPRINT: Yes.

GTEFL: No. The purpose of the bypass restriction is to prevent uneconomic bypass of LEC access facilities. The bypass restriction was recently readopted by this Commission in the EAEA proceeding independent of the decision to retain toll monopoly areas. The Commission should retain the bypass restriction as a necessary regulatory tool to manage the transition to full competition within the toll monopoly area.

UNITED: No. The bypass restriction was intended to prevent uneconomic bypass, and has been reexamined on numerous occasions. The policy should be used to limit uneconomic bypass regardless of the type service provider involved. If some accommodation for AAVs is thought by the Commission to be necessary due to statutory changes, a clear and limited exception to the bypass policy for AAVs only should be considered.

SOUTHERN BELL: No. None of the changes made to Chapter 364, Florida Statutes, make it appropriate to change the existing bypass restrictions in Florida.

In Order No. 16804, the Commission stated its bypass restriction regarding IXCs and their desire to provide intraEAEA access facilities. The Commission cited Subsection (4) of former Section 364.335, Florida Statutes, in upholding the restriction. That section stated, "The Commission may grant a certificate, in

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whole or in part or with modifications in the public interest, but in no event granting authority greater than that requested in the application of amendments thereto and noticed under subsection (1) or it may deny a certificate...". Furthermore, while the revised Section 364.335(3), Florida Statutes, permits AAVs to provide certain private line services, this does not contradict the Commission's long standing policy that prohibits uneconomic bypass.

ALLTEL: No position at this time.

OPC: The Citizens have no position at this time.

STAFF: Yes, the Commission's bypass restriction should be modified to allow AAVs to provide intraexchange private line between an entity's various locations and to provide special access between an end user and an interexchange carrier, as defined in Issue 1.

ISSUE 19: In light of the changes to Chapter 364, Florida Statutes, should the Commission change its policy on billing end users for special access?

INTERMEDIA: Yes. The consumer should have the choice of how and from whom it receives the bill for special access.

METROPOLITAN: No position.

MCI: Yes. The elimination of the current requirement that the local exchange companies must bill end users directly for intrastate special access is no longer appropriate if the Commission authorizes the provision of competitive dedicated access service.

SPRINT: US Sprint has no position on this issue at this time.

GTEFL: No. Billing end users allows the LEC to have market presence with end users. In addition, it also allows the end user to know which services are provided by the LEC and which services are provided by the IXC. This mechanism gives the LEC the required information to enable the LEC to help ensure they can meet end user requirements.

UNITED: Order No. 13934, issued January 11, 1985 in Docket No. 820537-TP reaffirmed the Commission's desire and rationale for billing end users for special access services. It was stated that such a billing arrangement made the end user acutely aware of the identity of those carriers from whom service was provided. Further, it ensured that bulk discounts for large users were

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appropriately passed on to the end user rather than to the IXC with the expectation that the discounts would be passed on to the respective end user. United is not aware of any new factors which negate these concerns and, therefore, believe the policy of billing end users directly for special access is appropriate and should be retained.

SOUTHERN BELL: No. The changes made to Chapter 364, Florida Statutes, do not require a change in the policy of billing end users for special access was established in Order No. 14452. In Docket No. 820537-TP, the Commission found it appropriate for special access to be billed to the end user and not to the IXC. Such a policy gives the end user the ability to most effectively manage his telecommunications services. Nothing in the changes to Chapter 364, Florida Statutes, alters that underlying rationale.

ALLTEL: No position at this time.

OPC: The Citizens have no position at this time.

STAFF: Yes. End users should continue to be able to receive special access bills directly from the LEC. In addition, IXCs (or AAVs) should be able to purchase special access and resell it to end users.

ISSUE 20: If AAVs are determined to be in the public interest, what actions should the Commission take to implement its decision in this docket?

INTERMEDIA: The Commission should initiate rulemaking on the certification of AAVs as soon as the final vote has been rendered. Intermedia believes that the adoption of AAV rules is highly desirable, but that the process of adopting rules should not be allowed to delay the introduction of intrastate AAV services to meet customer needs. Thus, after the final vote is rendered, AAV applications for requisite certification should be processed and approved immediately, but in no event later than August 1, 1991. Existing IXC certification procedures may be used as the framework for handling AAV applications on a case by case basis.

As implied by Intermedia's response to Issue 13, the immediate certification of AAVs need not trigger immediate changes in the way LEC services are regulated. The LECs are currently armed with sufficient flexibility under current regulation to respond to competition by AAVs. There is no justification to delay the grant of authority to AAVs while the LECs seek to effect changes in the way they are regulated.

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Intermedia stresses that it does not oppose changes in LEC regulation that will facilitate flexible responses by the LEC to competition. Intermedia does oppose, however, any approach that would give the LEC the opportunity and incentive to engage in predatory and anticompetitive behavior, for example, by subsidizing competitive service through monopoly services. Intermedia believes that fair and effective competition among AAVs and the LEC in the various private line markets will genuinely serve the public interest, and that the sooner such competition is allowed the better.

METROPOLITAN: In Florida Statutes, Section 364.337, titled "Intrastate Interexchange Telecommunications," the legislature determined that AAVs should be "considered to be interexchange telecommunications services." Section 364.337(3)(a) Florida Statutes. Therefore, if the Commission determines that the provision of AAV service is in the public interest, the Commission should certify AAVs utilizing existing interexchange rules and requirements. This will allow the Commission to immediately begin processing alternative access vendor private line certification applications, and will avoid any delay associated with establishing separate AAV certification rules and requirements. This will allow the Commission to speedily and faithfully implement the statutory changes enacted by the legislature in early 1990.

MCI: If the Commission determines that separate or additional rules are necessary for AAVs, it should immediately open a rulemaking docket. Regardless of whether rulemaking is required, the Commission should commence certification of AAVs as soon as possible, but no later than September 1, 1991. Existing IXC certification procedures could be used until any new AAV rules are in place.

The certification of AAVs will not require any change in the way that LEC services are regulated unless and until the AAV industry develops to the point that one or more specific LEC services become subject to effective competition within the meaning of Section 364.338. The Commission need not take any further action until the LECs petition under Section 364.338(2) for a finding that a specific service or services has become competitive.

SPRINT: If AAVs are determined to be in the public interest, then all actions deemed necessary and appropriate by the Commission to implement its decision should be taken as soon as possible.

GTE: 1. The Commission should take the following actions to implement its decision:

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- a. The Commission should eliminate intraLATA interexchange private line pooling including the restructure of the private line portion of foreign exchange service. Because of the activities associated with the foregoing items, it may not be possible to accomplish these tasks by January 1, 1992.
- b. Require all LECs to restructure their intraLATA intraexchange private line services.
- c. Increase all special access rates up to their appropriate rate level before authorized resellers are allowed to purchase these services.
- d. Allow LECs to use flexibly priced tariffs with banded rates as advocated by the staff as well as the continued utilization of contract service arrangements.
- e. An explicit subsidy mechanism should be established that provides a fixed contribution to universal service.
- f. The LEC and AAV filing requirements and notice periods should be the same. The regulatory process must not place the LECs at a disadvantage.

UNITED: The Commission should take the following actions if AAVs are determined to be in the public interest:

1. LECs should be allowed to detariff private line and special access services.
2. AAVs should be required to obtain the appropriate certification, and should be subject to the same degree of regulation as other companies with the same type of certification. The type(s) of certification sought should be determined according to the type(s) of service provided, based on existing classifications.
3. LECs should be allowed to adjust the rates of cross elastic or substitutable services in response to competition, and allowed to recover the shortfall from other areas of the business which are less vulnerable to competition.

SOUTHERN BELL: If AAVs are determined to be in the public interest as a result of this docket, then the Commission, with input from the telephone industry, should outline a step-by-step process to

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provide for a transition to a competitive environment for those services that AAVs would be authorized to provide. Steps that must be taken before AAVs are certified include:

1. The elimination of intraLATA interexchange private line pooling, including the restructure of the private line portion of foreign exchange service;
2. Require all local exchange companies to restructure their intraLATA interexchange private line services;
3. Bring all special access rates up to their full level before allowing resale;
4. Allow local exchange companies to use flexibly priced tariffs with banded rates for the full range of services that AAVs are allowed to provide. Costs for such services should be determined on a deaveraged or geographically specific basis;
5. An explicit subsidy mechanism should be established that provides a fixed contribution to universal service; and
6. Local exchange companies must have the same filing requirements and notice periods as AAVs.

In addition, the contract service arrangement (CSA) must continue to be available to local exchange companies in order for them to meet the various network requirements of their customers. It is only after implementation of these steps that the Commission should certificate AAVs. Additional proceedings may be necessary in order to properly consider the implications of these actions.

ALLTEL: No position.

OPC: No position at this time.

STAFF: The Commission should initiate rulemaking on the certification of AAVs as soon as the final vote has been rendered. Further, in Issues 3 and 13, the Commission needs to identify several dates as to when Commission decision should begin or end. The Commission should set January 1, 1992 as the date to:

1. Allow AAVs to receive a certificate from this Commission to provide AAV service as defined in Issue 1.

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2. Require the local exchange telephone companies to eliminate interexchange intraLATA pooling.
3. Require the local exchange companies to restructure intraexchange private line.

VI. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Joseph P. Gillan	Intermedia	JPG-1	Qualifications, Publications, and Testimony of Joseph P. Gillan
Joseph P. Gillan	Staff	JPG-2	Late-Filed Deposition Exhibit No. 1 - Update of Table 2 in Direct Testimony, Page 14 Exhibit No. 2 - Deposition Transcript pages 12-13, 15-106
Bobette D. Escolas	Metropolitan	BDE-1	Testimony of Bobette D. Escolas

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<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Bobette D. Escolas	Staff	BDE-2	Composite Exhibit - Late- Filed Deposition Exhibit No. 1 - Description of services provided by MFS, Late-Filed Deposition Exhibit No. 2 - Georgia PSC order granting MFS' certificate to provide carrier-to- carrier service Late-Filed Deposition Exhibit No. 3 - States where MFS provides, or is permitted to provide, AAV services. Exhibit No. 4 - Deposition Transcript pages 10-19, 21-37, 39- 48, 50-71, 74- 83, 85-104

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<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Bobette D. Escolas	Staff	BDE-3	Composite Exhibit/Staff's Interrogatories to Metropolitan Nos. 1-5,9- 12,15,18-19,23- 25 including diagram Figure I.,27-32,34- 35,38- 43,56,46a,47- 49,55-56,63- 64,66-67,69- 77,82-83,86- 87,95- 97,99,101,103- 109,114-125
David B. Denton	Staff	DBD-1	Composite Exhibit/Staff's Interrogatories to Southern Bell Nos. 1-15,17- 18, 20-23,25-29, 31-35,38-39,47- 49,55,58-62,65- 73,75,79,82,84- 90,97-109

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<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
David B. Denton	Staff	DBD-2	Late-Filed Deposition Exhibit No. 1 - 1990 Revenues Late-Filed Deposition Exhibit No. 2 - Number of Customers Late-Filed Deposition Exhibit No. 3 - Stranded Facilities Exhibit No. 4 - Deposition Transcript pages 10-12,14-21,23- 80
David B. Denton	Staff	DBD-3	Composite Exhibit/ICI's 1st set of Interrogatories to Southern Bell Nos. 2,4-5,8,10- 19
Ronald L. Tolliver	Staff	RLT-1	Composite Exhibit/Staff's Interrogatories to ICI Nos. 1- 12,14-19,23- 32,34-35,37- 43,46-47,55- 58,62,66-68,70- 77,79,85-88,93, 95-98,100-108, 114-126

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<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Ronald L. Tolliver	Staff	RLT-2	Composite Exhibit/Southern Bell's 1st set of Interrogatories to ICI Nos. 3- 5,7-8,10-18, 20-22,24,27- 28,31,33,36,43, 45-46,50,56,58- 59,63-65,69,75, 80,83,85
Ronald L. Tolliver	Staff	RLT-3	Late-Filed Deposition Exhibit No. 2 - Staff's Interrogatory No. 14 - Usage Data Exhibit No. 4 - Deposition Transcript pages 10-111,114,118- 123,125-137,139- 146

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<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Michael A. Viren	Staff	MAV-1	Late-Filed Deposition Exhibit No. 1 - Costing Methodology Late-Filed Deposition Exhibit No. 2 - Explanation of Typical Customer Calls Exhibit No. 3 - Deposition Transcript pages 11-81, 83-92, 94- 103, 117- 123, 126, 128- 165, 168-179
Beverly Y. Menard	Staff	BYM-1	Composite Exhibit/Staff's Interrogatories to GTE Nos. 1- 11, 13-17, 19, 21- 23, 25-26, 29- 35, 38-39, 47- 49, 54-55, 58- 62, 65, 67- 73, 75, 77-79, 82, 84, 85, 87-93, 95, 97-107

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<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Beverly Y. Menard	Staff	BYM-2	Late-Filed Deposition Exhibit No. 1 - FCC Report on Uneconomic Bypass Late-Filed Deposition Exhibit No. 2 - Revenue Impact Calculation by GTE Late-Filed Deposition Exhibit No. 3 - Back-up Regarding Existing Building Connections in Tampa, Florida Late-Filed Deposition Exhibit No. 4 - Percentage of Total Intrastate Revenues Attributed to Dedicated Services Late-Filed Deposition Exhibit No. 5 - Customers GTE Provides Dedicated Services and Loops Late-Filed Deposition Exhibit No. 6 - Estimate of Stranded

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<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
Beverly Y. Menard	Staff	BYM-2 (con't)	Exhibit No. 7 - Deposition Transcript pages 8-103
C. L. Teal	Staff	CLT-1	Composite Exhibit/Staff's Interrogatories to United Nos. 1-11, 13-17, 21- 29, 32-35, 38- 39, 47-50, 54- 55, 58-62, 65- 73, 75, 81-90, 97- 107

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<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
C. L. Teal	Staff	CLT-2	Late-Filed Deposition Exhibit No. 1 - Teal Update of Table 2 in Direct Testimony, Page 14 Late-Filed Deposition Exhibit No. 2 - Percentage of Total Revenues that are Dedicated Services Late-Filed Deposition Exhibit No. 3 - Services by Rate Elements Late-Filed Deposition Exhibit No. 4 - Potential for Stranded Facilities Exhibit No. 5 - Deposition Transcript pages 9-98

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**Staff intends to propose the stipulation into the record of the following exhibits:

<u>WITNESS</u>	<u>PROFFERING PARTY</u>	<u>EXHIBIT NO.</u>	<u>TITLE</u>
	Staff	USS-1	Composite Exhibit/Staff's Interrogatories to Sprint Nos. 1-11, 13, 16, 18, 19, 21-22, 24-25, 27-29, 32, 35-49, 51-53, 60-61, 63-64, 66-68, 73-75, 78, 80-83
	Staff	MCI-1	Composite Exhibit/Staff's Interrogatories to MCI Nos. 1-13, 15-19, 21-25, 27-28, 31-32, 35-49, 51-53, 56, 58, 63-67, 69, 75, 78-79, 80-83
	Staff	ALL-1	Composite Exhibit/Staff's Interrogatories to ALLTEL Nos. 1-2, 4-5, 21, 25-26, 28-30, 32, 35, 49, 55, 58, 67, 71, 82, 84

VII. STIPULATIONS:

There are no issues that have been stipulated at this time.

VIII. PENDING MOTIONS:

The only pending motion is Intermedia's Motion to Accept Late-Filed Testimony of Michael A. Viren.

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IX. RULINGS:

1. The Prehearing Officer granted Indiantown's Motion to Withdraw.

2. The Prehearing Officer also acknowledged Staff's intent not to pursue outstanding responses to interrogatories from Centel and all of the other small local exchange companies, except Alltel.

3. The Prehearing Officer, at the suggestion of some parties, ruled that parties desiring to do so may file Prehearing Memoranda of Law regarding the legal issues involved in this proceeding on or before March 15, 1991. These Memoranda are to address especially the new statutory provisions regarding alternate access vendors.

X. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION:

In the event it becomes necessary to handle confidential information, the following procedure will be followed:

1. The Party utilizing the confidential material during cross examination shall provide copies to the Commissioners and the Court Reporter in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material shall be provided a copy in the same fashion as provided to the Commissioners subject to execution of any appropriate protective agreement with the owner of the material.
2. Counsel and witnesses should state when a question or answer contains confidential information.
3. Counsel and witnesses should make a reasonable attempt to avoid verbalizing confidential information and, if possible, should make only indirect reference to the confidential information.
4. Confidential information should be presented by written exhibit when reasonably convenient to do so.
5. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the owner of the information. If a confidential exhibit has been admitted

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into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

If it is necessary to discuss confidential information during the hearing the following procedure shall be utilized.

After a ruling has been made assigning confidential status to material to be used or admitted into evidence, it is suggested that the presiding Commissioner read into the record a statement such as the following:

The testimony and evidence we are about to receive is proprietary confidential business information and shall be kept confidential pursuant to Section 364.093, Florida Statutes. The testimony and evidence shall be received by the Commissioners in executive session with only the following persons present:

- a) The Commissioners
- b) The Counsel for the Commissioners
- c) The Public Service Commission staff and staff counsel
- d) Representatives from the office of public counsel and the court reporter
- e) Counsel for the parties
- f) The necessary witnesses for the parties
- g) Counsel for all intervenors and all necessary witnesses for the intervenors.

All other persons must leave the hearing room at this time. I will be cutting off the telephone ties to the testimony presented in this room. The doors to this chamber are to be locked to the outside. No one is to enter or leave this room without the consent of the chairman.

The transcript of this portion of the hearing and the discussion related thereto shall be prepared and filed under seal, to be opened only by order of this Commission. The transcript is and shall be non-public record exempt from Section 119.07(1), Florida Statutes. Only the attorneys for the participating parties, Public Counsel, the Commission staff and the Commissioners shall receive a copy of the sealed transcript.

(AFTER THE ROOM HAS BEEN CLOSED)

Everyone remaining in this room is instructed that the testimony and evidence that is about to be received is

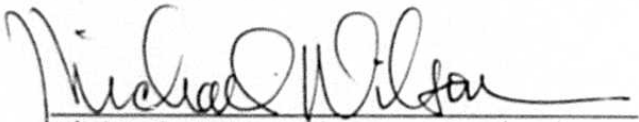
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proprietary confidential business information, which shall be kept confidential. No one is to reveal the contents or substance of this testimony or evidence to anyone not present in this room at this time. The court reporter shall now record the names and affiliations of all persons present in the hearing room at this time.

It is therefore,

ORDERED by Commissioner Michael McK. Wilson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Michael McK. Wilson, as Prehearing Officer, this 27th day of March, 1991.


Michael McK. Wilson, Commissioner
and Prehearing Officer

(S E A L)

SFS