

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into)	DOCKET NO. 890183-TL
the Operations of Alternate Access)	ORDER NO. 24877
Vendors.)	ISSUED: 08/02/91
_____)		

The following Commissioners participated in the disposition of this matter:

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FINAL ORDER FINDING ALTERNATE ACCESS VENDORS TO BE
IN THE PUBLIC INTEREST AND ESTABLISHING TERMS AND
CONDITIONS OF CERTIFICATION AND OPERATION

BY THE COMMISSION:

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 the Commission set out the terms, conditions, rules and requirements applicable to such telephone companies. 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).

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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 how alternate access vendors are operating and to decide any policy questions raised. We denied GTEFL's Petition because we determined it was more appropriate to establish this generic investigation on our own motion. We held the hearing in this matter on March 28 and 29, 1991.

Participating in this proceeding were Intermedia Communications of Florida, Inc. (ICI), Metropolitan Fiber Systems, Inc. (MFS), Southern Bell Telephone and Telegraph Company, Inc. (SBT), GTE Florida, Inc. (GTEFL), United Telephone Company of Florida (United), MCI Telecommunications, Inc. (MCI), U.S. Sprint (Sprint), the Office of Public Counsel (OPC) and the Staff of the Commission.

II. Alternate Access Vendors Defined

Due to the recent revisions to Sections 364.335 and 364.337, Florida Statutes, effective October 1, 1990, the Commission has been provided the legal definition of an AAV. Section 364.337, Florida Statutes, defines an AAV by defining AAV services, as follows:

(3)(a)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.

Section 364.335, Florida Statutes, defines the term "private line service" as follows:

For the purposes of this section, "private line service" means any point-to-point or point-to-multipoint service dedicated to the exclusive use of the end-user for the transmission of any public telecommunications service.

Although in their briefs, all of the parties acknowledged the above statutory definition of AAVs, most also define AAVs in terms of their view of what services AAVs provide or wish to provide or should be authorized to provide.

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Based on the record, the only telecommunications company operating in Florida today that provides services that may be considered AAV services and that participated in this docket is ICI. ICI is a certificated interexchange company (IXC) that provides jurisdictionally interstate dedicated access services. MFS is the only other acknowledged AAV that has participated in this proceeding. MFS is not currently operating in Florida as an AAV, but it does provide AAV services in several other states.

Based on the evidence in this record, AAVs provide dedicated, high speed transmission paths at DS1 and DS3 levels. These are often called "pipes." These services are typically leased on a monthly basis with a one-time nonrecurring charge when the customer first takes the service. In addition to DS1 and DS3, most AAVs will provide DS0 and fractional DS1 service for customers who do not require the full bandwidth of a DS1.

Most AAVs provide their services by way of fiber optic facilities in ring or loop configured systems around major metropolitan areas. Some also use microwave facilities in their fiber networks. However, many other transmission mediums could be used.

It is clear that the potential range of services that AAVs may be technically capable of offering is very broad. Although the term AAV implies that all the services AAVs offered include alternative access, AAVs may also provide services between IXCs, linking their points-of-presence (POPs), as well as intracarrier POP to POP links, and dedicated access service between an end user and an IXC. Some other services that AAVs may be able to provide include voice data imaging, video communications, access to information service providers, voice mail, and Integrated Services Digital Network (ISDN) transport and connections between Local Area Networks (LANs). Though, of course, there are legal prohibitions against AAVs providing switched services, AAVs appear to be technically capable of providing all services provided by the LECs, if they install switches into their networks. However, even with switches, AAVs do not have access to the LECs' ubiquitous networks and, theoretically, would not be able to effectively compete with the LECs in the provision of switched services.

III. Services Alternate Access Vendors May Be Authorized to Provide

The revisions to Sections 364.335 and 364.337, Florida Statutes, are susceptible to differing interpretations. All of the parties agree that these provisions clearly permit the Commission

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to authorize the provision of interexchange private line service and dedicated access service between an end user and an IXC. However, the parties differ on the question of whether these provisions give the Commission the authority to permit AAVs to provide intraexchange private line services.

One interpretation is that Section 364.337 prescribes that AAVs may only provide interexchange services. This interpretation is based on the final phrase in paragraph (3)(a) of that Section, ". . . and are considered to be interexchange telecommunications services." That interpretation would not give the authority to permit AAVs to provide intraexchange private line services.

The same statutory phrase may be interpreted as requiring that AAVs be regulated as IXCs. It is also possible to interpret the two sections as having their own sphere of control--in other words, Section 364.335, which defines "private line service" in one fashion would relate only to services which duplicate those provided by the LECs. Section 364.337, in which "AAV services" are defined, would relate only to the AAV services which will be provided on an IXC basis.

Finally, another interpretation is that the two sections should be read together, in pari materia, to mean that the definition of "AAV services" in Section 364.337 is to include the definition of "private line services" in Section 364.335. This interpretation would result in the Commission having the authority to permit AAVs to provide intraexchange private line services. All of these interpretations and others have been proposed by the parties.

Generally, the three LECs that have participated in this proceeding, SBT, GTEFL and United, have taken a restrictive view of these statutory provisions in terms of what services the Commission may authorize AAVs to provide. Naturally, the two AAVs, ICI and MFS, have taken the most liberal view of these provisions, as has MCI. OPC has taken a liberal view also.

One controversial issue regarding these new statutory provisions is whether this Commission may authorize the AAVs to provide intraexchange dedicated services. It is the LECs' assertion that the final phrase in paragraph (3)(a) of Section 364.337, ". . . and are considered to be interexchange telecommunications services", dictates that the Commission may only authorize AAVs to provide interexchange services. The LECs read this phrase as a geographic limitation on the services the Commission can authorize AAVs to provide. Therefore, they argue,

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the Commission may not authorize AAVs to provide intraexchange private line services.

The LECs contend that we must first look to Section 364.337, Florida Statutes, for our initial authorization for and definition of AAV services and for the threshold public interest determination. Only then, the LECs assert, may this Commission look to Section 364.335 for the authority to issue a certificate that permits duplication of LEC services without modifying the LECs' certificates. Reading Section 364.337 first, the LECs argue, prescribes that all services provided by AAVs must be of an interexchange nature.

On the other hand, ICI, MFS, MCI and OPC interpret this phrase, ". . . and are considered to be interexchange telecommunications services", to be simply descriptive of the services that AAVs may be authorized to provide. They see it as a label that removes these services from the category of local exchange monopoly services provided by the LECs. MFS points out, in its brief, that it is clear by the very adoption of these revisions, that the Legislature intended to authorize the Commission to certificate AAVs to provide services that would compete with the LECs. To create a geographic distinction between intraexchange and interexchange private line services where none is provided in the statute, is inappropriate, all of these parties argue.

We find that these statutory provisions must be read together. Neither the definition in Section 364.337 of "alternate access vendor services" nor the provision in Section 364.335 authorizing the duplication of LEC services and defining "private line service" prescribes any prohibition against the provision of intraexchange private line service by AAVs. We interpret the phrase ". . . and are considered to be interexchange telecommunications services" to be a label which reflects the legislative intent to carve out of the LEC monopoly services these particular private line services. Therefore, we find that this Commission has been given the authority to certificate AAVs to provide intraexchange private line service. We further find that this Commission must do so if we find such to be in the public interest.

A second major point of controversy regarding the interpretation of the new statutory provisions is, if this Commission finds it may authorize AAVs to provide dedicated services, are we limited to permitting AAVs to provide private line services to affiliated entities based on the provision in Section 364.337 that defines AAV services as "...between an entity and its facilities at another location."

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The LECs take the position that, if we find that we do have the authority to certificate AAVs to provide private line service, Section 364.337 limits all private line service provided by AAVs to that ". . . between an entity and its facilities at another location." In addition, the LECs assert that Section 364.335 limits all private line service to the "exclusive use of an end user." The LECs assert that these limitations mean that AAVs may only be authorized to provide private line services, if at all, between entities which have some ownership or affiliate relationship.

ICI and MFS argue that there are no such limitations provided in these statutory provisions. Their interpretation of these phrases is that they simply reflect the traditional industry definition of private line service. ICI and MFS point to several provisions of SBT's private line tariff which demonstrate that it considers the terminating port of the private line at an IXC POP to be the property of the customer. ICI and MFS argue that the industry definition of private line is that it is dedicated to the exclusive use of the end user and that the relationship between the purchaser and the party at the other end of the private line is insignificant. This provision, in their view, merely reflects that understood definition and it was not intended to limit the provision of intraexchange private line service by AAVs to that between affiliated entities.

However, we find that Section 364.337 clearly states in its definition of AAV services that they are the ". . . provision of private line service between an entity and its facilities at another location. . . ." Therefore, some meaning must be ascribed to that phrase which could easily have been left out if the Legislature intended the meaning that the AAVs assert. Also, the limitation in Section 364.335 that such private line service must be "dedicated to the exclusive use of an end user" supports this interpretation. If non-affiliated entities are served by AAVs, there will actually be two end users, not one end user as the statute provides. Therefore, we find that this statute limits our authority to permit AAVs to provide private line service, both intraexchange and interexchange, to that private line service between affiliated entities. Further, we find that the limitation for service between affiliated entities extends to any part of a private line (point-to-point) service in which an IXC provides a part. That is, an AAV may provide special access which connects to an IXC switch and have it terminate to any end user. However, if an AAV provides special access which is part of an end to end dedicated service, it may only be provided between an end user and its affiliates.

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No party offered any definition of "affiliated" beyond the concept of shared ownership. However, in the context of the Shared Tenant Services proceeding, by Order No. 17111, issued January 15, 1987, this Commission defined "affiliated entities" as those corporations, partnerships, proprietorships or other groups that hold stock in excess of 50 percent of the stock of the entity which claims to be affiliated. Therefore, if an entity controls less than 50 percent of the stock of another entity, these entities are not affiliated. We find this definition of "affiliated entities" to be appropriate in our interpretation of the new portions of Sections 364.335 and 364.337, Florida Statutes.

IV. Alternate Access Vendors in the Public Interest

By Sections 364.335 and 364.337, Florida Statutes, this Commission has been authorized to certificate "persons" to provide AAV services if we find them to be in the public interest. In order to make this threshold determination as to whether AAVs are in the public interest, we must consider the factors set out in Section 364.337(2), as follows:

(2) In determining whether the actions authorized by subsection (1) are consistent with the public interest, the commission shall consider:

- (a) The number of firms providing the service;
- (b) The geographic availability of the service from other firms;
- (c) The quality of service available from alternative suppliers;
- (d) The effect on telecommunications service rates charged to customers of other companies; and
- (e) Any other factors that the commission considers relevant to the public interest.

Accordingly, in this proceeding, we have considered all of the above criteria, including all of the potential benefits to be offered by AAVs, as well as all of the potential negative impacts the AAVs might have on the current intrastate telecommunications market, including ratepayers and existing telephone companies.

The LECs have argued that a finding that AAVs are in the public interest could have dire consequences for the LECs and for local ratepayers because it could result in the loss of all of the LECs' revenues from private line and special access services.

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Those lost revenues, the LECs continue, would then have to be recovered from local ratepayers, who would be receiving almost none of the benefits to be offered by AAVs. The LECs further argue that AAVs do not have any "carrier of last resort" obligation nor any responsibility for universal service. They assert that AAVs will not be hampered by the other regulatory constraints the LECs have such as tariffs and averaged rates.

The LECs contend that they must be given much greater flexibility to compete if this Commission is to make a finding that AAVs are in the public interest. Some of the LECs have also argued that the AAVs must be required to support universal service through a contributory mechanism. The AAVs must be required to fulfill every regulatory requirement placed on LECs and IXCs, the LECs have argued, in order to assure that no detrimental effects occur.

In addition to any lost revenues from special access or private line services, the LECs contend that they might lose contribution from customers who migrate from the switched network to special access. However, the LECs did not quantify in any way this potential lost contribution.

We agree that our consideration of whether AAVs are in the public interest includes a determination of the probable impact these new players will have on the LECs and their local ratepayers. If the evidence produced in this proceeding demonstrated a potentially catastrophic impact on the LECs and the local ratepayers, we would not be able to make a finding that AAVs are in the public interest.

However, we find that many of the arguments presented by the LECs and the AAVs have been rather extreme. The dire consequences predicted by the LECs are simply not supported by this record. The zero negative consequences predicted by the AAVs are, likewise, not supported. There has been ample evidence presented that the AAVs have benefits to offer and that, by offering their services, the AAVs will and, indeed, have spurred the LECs to offer new services. Therefore, we hereby find it in the public interest to certificate AAVs to provide intraexchange and interexchange private line services to affiliated entities and special access services.

AAVs will be able to fill niche markets for services that the LECs either cannot or do not offer. Through their new types of technology and reliability, the AAVs will provide customers an alternative to the LECs for dedicated access services, in a wide range of capacities, from a DS-3 level for high volume customers to a DS-0 for customers requiring one voice grade circuit. AAVs will offer self-healing redundant networks to customers, which may not

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be available from the LECs. In addition, AAVs, by virtue of their different routing from the LECs, will offer back-up services to private line users.

AAVs may be able to price their services below that of the LECs. They have done so in the interstate access market and have survived. The customer demand for AAV services has grown sufficiently to allow the AAVs to expand their market areas to multiple cities.

Another potential benefit of AAVs is that, at least partially in response to competition from AAVs, the LECs are offering new services. Within the past year, this Commission has approved tariffs for switched data services and derived data channel services. The combined effect of all of these factors is to give end users greater flexibility in the design of their communications networks. Obviously users of those dedicated services are direct beneficiaries of AAV services. Additional, if indirect, beneficiaries are the customers of the businesses which use AAV services, and any customers who have access to new services offered by both LECs and AAVs.

The most notable negative impact that AAVs may have on the current intrastate telecommunications market is the loss of revenues resulting when customers go to AAVs for services that might have been provided by the LECs. The LECs assert that AAVs target high usage business customers who are the most profitable segment of the communications market and which, therefore, provide a substantial contribution to maintaining low local service rates. However, the LECs were not able to quantify this potential lost contribution.

Another potential negative impact of AAVs, the LECs contend, is the duplication of the telecommunications infrastructure. However, based on the evidence in the record, we believe that AAVs will have a positive effect on the reliability of the telecommunications infrastructure through the increased redundancy and diversity offered over their network. Redundancy is utilized to achieve standby electronics in case of an equipment failure. Diversity relates to the physical direction of the cabling. Two paths are provided in the AAV's network; therefore, if a failure were to occur in one pathway, all signals are sent in the other pathway, and the customer's service is maintained. The combination of redundancy and physical diversity results in a more reliable network.

While the assessment of any impact on universal service that AAVs may have is related to any impact AAVs may have on local

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ratepayers, there are some distinctions between them. For example, even supposing that local rates are forced upward by allowing AAVs to operate, there may or may not be a significant impact on universal service. Even if the effect on local rates were quantifiable, the impact on universal service is decidedly more difficult to determine. However, we find that if any measurable impact on universal service occurs, only at that point would it be necessary to address that impact. We could, at that time, consider the appropriateness of some sort of funding mechanism whereby a contribution to universal service by AAVs might be made. However, while the concern over eroding LEC revenues is real, experience has indicated that the effects of new entrants has usually not been as negative as predicted.

The LECs have also raised a concern that their obligation of being the carrier of last resort, as they perceive it, could result in harm to the telecommunications infrastructure. The LECs' understanding of being the carrier of last resort refers to their obligation of providing enough stand-by facilities in their network to foresee meeting the traffic load when either alternative carriers do not build enough capacity or there is a failure with the alternative carriers' network. They believe it is their obligation to provide service to any customer within their franchise area who requests service.

The LECs believe that a vast number of the AAVs' customers are large customers. The AAVs believe it is more properly characterized that a vast number of their customers have large telecommunications traffic requirements. The LECs claim if a breakdown in the network of an AAV were to occur, there is the possibility of experiencing traffic loading problems. The LECs assert that if this were to occur it could result in blockage for not only the AAV's customers but for all other customers served by those LEC facilities. We recognize this hypothetical situation could occur; however, the obligation of being the carrier of last resort only exists to the extent that LEC facilities are available. If the LEC is required to construct new facilities in order to provide service, the customer may be charged rates from the LEC's special construction tariff. This would require the customer to be liable for anything above the normal tariff charge.

Therefore, if the customer chose not to pay the LEC's price or if the LEC could not provide the service in the length of time the customer requested, the LEC's obligation to serve would not be a requirement for the LEC. Even with the current bypass policy, which has generally been understood as applying to special access facilities, there is the opportunity for another utility to provide

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the service in a more timely and economic manner on a case-by-case basis.

Clearly, if we authorize competition for private line and special access services, the LECs will lose some, but not all, of their private line and special access revenues. Not all areas of the state have firms positioned to compete with the LECs. Certain parts of the state may never face competition for private line and special access services because of their rural nature, or because of costs that may be otherwise prohibitive.

Another reason that we believe the LECs are unlikely to lose all of their private line and special access revenues is that it is basically inconceivable that competitors could take away 100% of the LECs' private line and special access customers unless the LECs' costs are substantially higher than a competitor's costs. Because of the nonrecurring charges associated with private line and special access services, a customer is unlikely to switch over to a competitor unless there are substantial savings in recurring charges. From an economic efficiency standpoint, if the competitors can truly provide lower cost service, then they should do so. It should be noted that if the LECs were to lose all of their private line and special access revenues, they would also lower their costs to some extent. The LECs would no longer face the variable costs of providing such services, and there should be some salvage and re-use value in the equipment.

Another limitation on the potential impact of AAVs is the fact that we have interpreted Sections 364.335 and 364.337, Florida Statutes, to limit AAVs' provision of private line services to affiliated entities. This will significantly limit AAVs' participation in the private line arena.

ICI, MFS and OPC assert that the provision of AAV services should have little or no affect on LEC local service rates. For ICI and MFS, this is primarily because of their belief that private line and special access revenues make up such a small part of LEC revenues that even losing the majority of this market to AAVs should have little effect on LEC local service rates. OPC's belief is based on its view that private line and special access services provided by the LECs have historically provided little or no contribution.

Based on all of the foregoing discussion, we find it in the public interest to certificate AAVs to provide private line and special access services on the terms and conditions set out below.

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V. Terms and Conditions of AAV Certification
and Operation

A. Separate Certification for AAVs Appropriate

As would be expected, the determination of whether to certificate AAVs as IXC's or as some other type of carrier has brought out a wide range of views and arguments from the parties in this investigation. GTEFL has argued that AAVs should only be allowed to provide IXC services and, therefore, should be certificated as IXC's, if at all. MFS, OPC, MCI and US Sprint believe that AAVs should be certificated as IXC's.

We believe the Legislature intended to allow this Commission to determine whether the provision of AAV services is in the public interest, and if found to be in the public interest, to certificate those companies separately from IXC's. If we certificate AAVs as IXC's, it would cause even more confusion surrounding the provision of AAV services, as well as switched interexchange services.

Throughout this investigation, this Commission has collected information from four IXC's and the major LECs on the provision of these services. Although these parties have provided a great deal of information, the potential effect of AAVs on the LECs is still unknown and will require some form of monitoring that can only be possible if AAVs are certificated separately. Certificating AAVs separately from IXC's and requiring some form of annual report will provide a basis on which to evaluate which companies are providing AAV service and what effect these companies are having on the LECs.

Therefore, based on the record in this investigation, we find it appropriate to certificate AAVs as AAVs, not as IXC's or LECs. Additionally, we will initiate a rulemaking proceeding to develop rules and guidelines for the companies that want to provide AAV services. Until completion of the rulemaking proceeding, AAVs shall comply with the provisions of this Order, including that all companies that want to provide AAV services shall file an application on form CMU/PSC 31, Application Form for Authority to Provide Interexchange Telecommunications Service within the State of Florida, excluding the tariff requirement. No AAV shall initiate service before January 1, 1992.

An IXC which purchases special access-type service (end user-to-IXC POP) from an AAV, and then resells it to an end user, is itself providing AAV service, and therefore, shall obtain an AAV certificate from this Commission.

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B. Authorized Services for AAVs

ICI and MFS propose to provide the AAV services defined in Sections 364.335 and 364.337, F.S. Although these companies' operations have been the main focus of this investigation, several witnesses have stated that AAVs will utilize a fiber optic network to provide AAV services. The use of the term "fiber optic" in the parties positions is not an exclusive term when discussing the potential services provided by an AAV. Witness Menard of GTEFL identified several other types of companies which are not exclusively AAVs, such as power companies and cable television companies, that have the potential to provide AAV services. In addition, ICI's witness Tolliver identified cellular companies, IXCs and even LECs outside of their certificated areas as potential competitors for LEC provided dedicated services. These companies could utilize their respective broadband facilities, whether leased or owned, to provide dedicated services to residential or business entities within reach of their facilities. We agree with GTEFL's witness Menard's observation that if this Commission deems AAVs to be in the public interest, any company with access to transmission facilities eventually could become an AAV.

The parties do not agree on which services AAVs should be permitted to provide, if any. GTEFL argues that AAVs would follow a logical progression from the dedicated point-to-point services they provide today to switching functions which could totally replace LEC-provided services. According to GTEFL, the scenario begins as AAVs move from providing dedicated point-to-point services to the provision of non-dedicated, or bandwidth on demand, point-to-point and multi-point services. GTEFL describes this as an inter-site networking alternative to the LEC. The next step, GTEFL asserts, would be to add a circuit switching capability to replace the functions of the LECs' end offices as equal access traffic concentration points for their IXC customers. The AAVs could then offer many features that would directly compete with such LEC services as ContraNet, voice mail, and Central Office-Local Area Networks (CO-LAN). Finally, with the introduction of circuit switching in two or more geographic areas, the stage would be set for the replacement of the LECs' intra-EAEA toll and local exchange dial tone services with AAV-provided services.

SBT also asserts that a progression of services from special access services to intraLATA switched services may occur. The Company presented evidence that this progression may occur in a mere five years. United argues that if AAVs incorporate switching capabilities into their networks, they will be able to provide virtually the same services as LECs in the long run.

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AAVs appear to offer two services which the LECs do not and which may expose the LECs to greater potential lost revenue. The first is a fractional T-1 service which allows users who need as little as a single channel to receive service. The second is a special access service which can be provided to a group of small customers, rather than to a single customer.

When asked what products AAVs offer which LECs do not, MFS responded that MFS offers service packages individually tailored to customers which incorporate innovative products including network redundancy and network restoration as well as different transmission speeds. ICI responded that "AAVs offer higher quality, and more reliable service because of their full fiber optic technology and redundant electronics and diverse routing."

Each party was asked for information on the comparative benefits and disadvantages to IXC and end users of interconnection to an AAV versus a LEC. GTEFL responded that IXCs benefit through carrier diversity and lower price. They argued that end users benefit primarily through price since the attributes for dedicated services are fairly consistent whether provided by LECs or AAVs. They claimed, however, that LECs provided an additional advantage of a technically experienced and financially stable company with a strong local presence. SBT claimed there were no benefits to IXCs from interconnection to an AAV. Benefits to the end user were faster installation and prices that are 10% to 15% below those of the LECs. SBT stated that LECs, on the other hand, offer additional benefits in that an end user can select from a full range of services and does not have to be concerned about whether all of the end user's locations are on the network.

United pointed to the possibility of lower access costs as the only benefit to IXCs of interconnection to AAVs. Similarly, it stated that end users may benefit from lower prices. On the other hand, interconnection to a LEC, United's witness Teal stated, "...offers proven performance, reliability, and ubiquitous service that the new entrant will not be able to ensure."

MFS noted several advantages to IXCs and end users. These include disaster recovery, responsiveness, clearer transmissions, cost savings, and national service provisioning and control.

ICI responded that the true advantage to customers is the ability to have a choice. ICI stated that the advantages include full fiber systems, redundant electronics, diverse routing, dedicated bandwidth and a choice of provider.

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It should be noted that the LECs can provide the same type of redundant electronics and diverse paths as the AAVs. However, they generally do not, except on a special construction basis. As for the ability of AAVs to provide service within days, this is a result of their generally only serving customers along their fiber route.

As for the disadvantages of AAVs, GTEFL stated that an "AAV may not have the service monitoring report and restoral resources available to it on a short notice, that the LEC does, in the event of a major outage." SBT pointed out that an end user of an AAV "may not have a full selection of services. Also, all of the end user's locations may not be on the AAV network." United similarly claimed that the main disadvantage of interconnecting to an AAV would be that an "AAV may not be able to serve all of a customer's locations and may not have the same level of support for repair."

There are at least four distinct categories of services which AAVs are now technically capable of providing. In addition, there is a vast array of, as yet unknown, services which AAVs could provide. The categories of services which AAVs are now technically capable of providing include special access, intraexchange and interexchange private line and switched services. While AAVs in Florida claim that they do not presently own any switching equipment, it would be a simple matter, from a technical standpoint, to acquire and install either circuit or packet switching equipment.

There are several factors which we must consider to determine whether the provision of these services by AAVs is in the public interest. These include the impact on local ratepayers, universal service, technology and infrastructure, and on potential users of AAV services. Perhaps the most important consideration in determining whether certain services, when provided by AAVs, are in the public interest, is the impact on local ratepayers. The Commission has many responsibilities in the regulation of telecommunication services, but ultimately the most important responsibility is to the local ratepayers of this state.

Determining the impact on local ratepayers is, however, a difficult task. The first step is to quantify the LEC revenues put at risk by the operation of AAVs. While this may be an easy task for AAV services which may be identified, it is clearly difficult, if not impossible, to quantify LEC revenues for services which AAVs do not presently provide, but may provide in the future. This is one reason that we believe the Commission must take a narrow view of the services which AAVs should be allowed to provide. After identifying the LEC revenues which may be at risk, the next

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consideration is how much of that revenue may reasonably be expected to be lost by the LECs, and then what effect that lost revenue would have on overall LEC operations.

Little impact on LEC local ratepayers is expected if the Commission only authorizes AAVs to provide intraexchange and interexchange private line to affiliated entities and special access services. The impact of allowing intraexchange and interexchange private line to affiliated entities is greater than the impact of allowing intrastate special access. This is because special access is primarily jurisdictionally interstate traffic, and thus the majority of special access demand is already open to competition. In addition, the revenues at stake are greater for intraexchange and interexchange private line than for intrastate special access.

C. No Tariff Requirements for AAVs

GTEFL's witness Menard suggests that the AAVs should be required to file tariffs with this Commission. Generally, a tariff illustrates to a customer what services and rates will apply to a specific service. In the IXC market, tariffs provide information to competitors on prices and services, as well as providing information to customers. AAV customers, on the other hand, will tend to be high volume, sophisticated customers at first, and we would agree that even if AAVs are providing voice grade private line, the customer base is more cognizant than the average IXC customer of choices and alternatives. Starting with the premise that this Commission should not regulate more than necessary, we find it appropriate to require no tariff for AAVs. The only reason a tariff might be reasonable is that the up front costs and, potentially, the termination costs for customers can be pricey. However, customers utilizing AAVs should be going in with open eyes, and be aware of the risk of dealing with a relatively recent market entrant. Therefore, the filing of tariffs would provide limited benefit.

From a tariff perspective, we believe AAVs are different from IXCs and LECs. Except for the provision of interexchange private line transport, AAVs will not compete with IXCs. Further, it has been pointed out in this investigation, AAVs will utilize contracts when dealing with their customers for AAV services. Generally, the customers of an AAV are more sophisticated than an IXC customer, and when completing a contract with an AAV those customers will be aware of the details of that contract. However, AAVs shall make clear in any contract to its customers the quality of service, rates and termination charges applicable to that contract.

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D. No Specific Service Standards Created for AAVs

We do not presently find appropriate the imposition of minimum service standards for AAVs. However, minimum service standards may be required in the future, if it is determined that a problem exists. If standards were required it would primarily be because of the large nonrecurring charges associated with Special Access/Private Line services. In a perfectly competitive market, service standards would not be necessary since an end user could switch to another provider if unsatisfied with the service received. Similarly, in a market which requires end users to pay large sunk costs, an end user may not be able to switch providers with ease. Such an end user might be considered a captive customer, who needs the protection afforded by minimum service standards. On the other hand, users of the types of services AAVs provide are primarily large business users. Such users tend to be fairly sophisticated and are apt to demand minimum service standards in any contract for AAV services.

E. Bypass Restriction

In December 1983, the Commission issued Order No. 12765 dealing with equal access for customers of IXCs. We also addressed in Order No. 12765 the threat of uneconomic bypass. We stated in that Order "...the IXCs shall not be permitted to construct facilities to bypass the LECs unless it can be demonstrated that the LEC cannot offer the facilities at a competitive price and in a timely manner." Since the issuance of that Order, we have reconfirmed the bypass restriction on numerous occasions. In our reconsideration of Order No. 23540 in Docket No. 880812, Investigation into EAEAs, TMAs, 1+ Restriction to the LECs and Elimination of the Access Discount, we noted the bypass restriction was to be addressed in this docket. If no changes are made in the way the bypass restriction is presently stated or if some provision is not made to exempt AAVs, the intrastate special access services the AAVs propose to offer will violate the bypass restriction.

We believe that it is appropriate to authorize AAVs to provide bypass services subject to the conditions set forth herein. In addition, we find it appropriate that neither IXCs nor any other entities shall bypass LEC facilities unless they are certificated as AAVs.

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F. AAVs Not Required to Follow the LECs' Costing Methodology

The type of cost methodology that is used by the LECs for pricing their private line and special access services is identified by SBT as a long run incremental study. This study was developed and approved by this Commission in Docket No. 820400-TL, the Private Line Cost Manual. The Commission requires the larger LECs to submit this study along with any other study the company thinks is relevant in rate cases and whenever private line and special access rate changes are proposed. SBT believes that AAVs and all providers of dedicated services should use this manual in determining their cost of service. ICI and MFS are currently certificated as IXCs in Florida. The Commission does not require minor IXCs to file a cost study when setting rates for any of their services, including the dedicated services. Their market is a competitive one without the opportunity of a subsidy from monopoly services and if prices do not cover all costs incurred, then they will not be able to survive. This should hold true for AAVs as well. The Private Line Cost Manual is too burdensome for smaller companies like AAVs to use. In Rule No. 25-4.044, F.A.C., we granted relief to the smaller LECs from the requirement of using the Private Line Manual for costing out their dedicated services.

Therefore, we do not find it appropriate to subject AAVs to the same requirements as the LECs when costing out services. AAVs set their rates at some margin below that of the LEC. This allows AAVs to price a service at a rate desirable to the customer while achieving maximum profitability. Cost studies are only used as a check to insure that the company's costs for providing service are being covered and to determine the profitability of serving a particular customer.

G. Provision of Switching Services Prohibited for AAVs

There is agreement among the parties that AAVs are not authorized to offer switched services. ICI states that it does not intend to provide switched service. MFS, also stated that AAVs should be prohibited from providing switched services. However, there has been some concern that the use of a Digital Access Cross Connect System (DACS) constitutes switching. Witness Viren described a DACS as a device used to "groom" or repackage so as to maximize space in DS-1s and DS-0s. We find that a DACS, as limited to the functions described in this proceeding, is not a switch in that the customer's choice of circuits is assigned by the AAV and remains as a dedicated assignment until the customer requests a change.

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All parties stated that they were unaware of any instance in Florida where an AAV has incorporated switching equipment into its physical network. However, it was generally acknowledged that a potential switching capability exists. Providing private line or dedicated access service excludes any circuit type switching. GTEFL witness Menard referred to circuit switching as the establishment of a single communications path between a calling party and a called party just for the duration of the communications session (call). Based on the record herein, this appears to be an accurate description of circuit switching.

Like circuit switching, packet switching requires that, once a packet switch path is established, all packets of a multipacket message follow the same route through the network until completion, then this circuit is broken down and its components are made available for a different message. ICI referred to packet switching as a function identical to what it currently uses for its DACs. We do not agree that packet switching is the same as DACS.

We believe that the selective routing of data/voice packets and virtual circuits utilized in packet switching represent a form of circuit switching.

In summary, we find it is appropriate for AAVs in Florida to implement the operation of the digital access cross-connect system (DACCS). However, use of central office type circuit switches and instantaneous circuit routing devices similar to packet switches is prohibited by Chapter 364, Florida Statutes.

H. No Switching or Monitoring Equipment for Jurisdictional Call Screening or Blocking Required for AAVs

Call screening means determining the jurisdiction, whether interstate, intrastate-interLATA or intrastate-intraLATA, of a given call by evaluating the originating point of the call in relation to the terminating point. The testimony submitted suggested three alternatives for determining the jurisdictional nature of the traffic, carried over an AAV facility. The alternatives were 1) add switching capabilities to the AAV's network; 2) use of monitoring equipment, such as a call disposition analyzer, to sample traffic; and 3) rely on customer-provided data.

Jurisdictional call screening is not currently performed by AAVs, nor do the LECs currently monitor their facilities to determine the jurisdictional nature of the traffic carried over their special access/private line facilities. They depend on the customer providing them with percent of interstate usage (PIU) data, and, if necessary, auditing their customers lines.

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We do not find it appropriate to require AAVs to determine the jurisdiction of the traffic carried over their networks any differently than that of the LECs. However, AAVs shall require customer-provided information in the form of written verification from the customer or in some cases actual usage data in determining the jurisdictional nature of the traffic to be carried over their network. The need for the AAV to request actual usage data from the customer may be required if the AAV believes that the customer's interstate usage is not 10% or greater. We do not find it appropriate to require AAVs to purchase switching or monitoring equipment for the sole purpose of performing jurisdictional call screening.

Call blocking refers to the ability to deny a customer's access to the network facilities once the call was identified as going to an unauthorized destination. Absent some form of switching capabilities, blocking cannot be performed by an AAV.

AAVs currently utilize customer data verification identical to that required by the LECs in their interstate special access tariffs to prevent unauthorized transmission over their facilities. This method requires that if a billing dispute arises or a regulatory commission questions the projected interstate percentage, the customer must provide the data that was used to determine that percentage. AAVs also rely upon the carriers for whom they transport traffic to perform all required switching functions such as call screening or any required blocking.

Based on the record herein, we find blocking cannot be performed by an AAV without some form of switching capabilities which, of course, we have found to be prohibited by Chapter 364, Florida Statutes. Therefore, we find that the procedures AAVs currently use to regulate unauthorized transmission over their facilities, customer claims that their interstate usage will be 10% or greater or in some cases actual usage data from the customer, are adequate.

- VI. No Changes Needed to Permit Competition Between LECs and AAVs
- A. No Further Regulatory Flexibility Needed by LECs at This Time

All of the LECs have proposed various regulatory modifications that they assert would make it possible for them to compete with AAVs. These modifications include rate deaveraging, changes to their carrier of last resort (COLR) obligation, and various types

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of pricing flexibility. While GTEFL, SBT, and United all expressed the desire for geographically-specific rates, none of them was able to give any specifics as to how rate deaveraging might be implemented. From an economic standpoint, rate deaveraging is an attractive concept because the cost causers pay: where costs are higher, rates are higher. However, rate deaveraging could also be based on a non-cost basis, such as the presence of an alternative.

The pricing flexibility now in place for LECs allows for prices lower than the tariffed rates, but not higher prices. The concern on the part of the LECs appears to be that their tariffed rates, which are averaged, may not cover the incremental costs of each customer who requests service. For customers located in areas which are more expensive to serve, the LECs would like to be able to charge higher rates to at least cover incremental costs. However, we believe the LECs already have adequate pricing flexibility, and they have not offered any specific proposals in this proceeding on how a system of geographically deaveraged rates might be implemented.

The LECs contend that they are disadvantaged because they are under a COLR obligation to all customers. However, the COLR requirement, as it applies to private line and special access services, simply means that the LEC is obligated to offer service to every customer at a price which recovers the costs of that service. While these services are tariffed, special constructions may be required. If a special construction is required, the LEC simply offers the service at a price covering costs to that particular customer. If the customer believes the price is too high, then the customer need not accept the service, and the LEC has no further obligation to offer that service to that customer. If the customer accepts the service, then the LEC is no worse off as long as the price covers the costs of providing service.

We do not find that the COLR obligation, as it concerns private line and special access services, needs to be changed. No concrete evidence was offered that the COLR obligation in any way limits the ability of the LECs to compete or otherwise disadvantages the LECs. To the extent that the tariffed rates for private line services are below their costs, this problem will disappear once the private line restructure is completed in 1992.

Three types of pricing flexibility were explored in this proceeding. One type of pricing flexibility discussed is individually priced services within a preset band. Such an arrangement contemplates a floor and a cap rate within which the LEC could vary the prices for individual customers. We do not find it appropriate to authorize the LECs to offer these private line

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and special access services at individual prices within a preset band. This is primarily because AAVs offer competition to the LECs in such limited geographic areas that we find contract serving arrangements (CSAs) and individual case basis pricing (ICBs) are sufficient.

CSAs and ICBs are two types of pricing flexibility the LECs currently have for private line and special access services. CSAs may be used in the case of specifically authorized tariffed services. If an end user has an alternative to the LEC from which he may seek service, the LEC is authorized to offer the end user a contract at below tariffed rates and above incremental costs. The primary requirement from this Commission's perspective is that the contract rate must exceed the incremental costs of providing the service. ICBs apply when an end user seeks some special facilities which are not generally available in the LEC's tariff. The LEC is authorized to offer the end user a contract price which is specifically developed for those special facilities.

The LECs have not made extensive use of CSAs for several reasons. United asserted that it has not yet been faced with a competitive situation in which CSAs were necessary. GTEFL and SBT both testified that the CSA process was time consuming and unwieldy. According to the LECs, the problem seems to be that performing the appropriate cost studies for each proposed contract takes up to 30 days or more. ICI's witness Gillan responded that this was an internal problem and not a problem with the CSA process itself. GTEFL's Witness Menard concurred. Witness Gillan argued that no additional pricing flexibility need be granted the LECs, and that CSAs and ICBs are all the flexibility any LEC should need.

We find that the LECs should streamline their CSA procedures. We recognize that performing cost studies for every contract may be burdensome. However, if any LEC finds that some other option to CSAs is necessary, then it should come before this Commission with a specific request for new pricing authority. As for now, we find it appropriate that the LECs continue to use these two pricing mechanisms.

The detariffing of a LEC service simply means that no tariff would be filed for that service, but any revenues from that service would continue to be regulated. With no tariff on file the LEC would be free to price the service on a customer specific basis, with no price floor or price cap. United proposed detariffing private line and special access services, but was unable to offer any specifics as to how these services might be detariffed. GTEFL and SBT both argued against detariffing these services. The basic reasoning was that a detariffing proceeding would be very lengthy,

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and that a LEC which had detariffed private line and special access services would fall under Section 364.338, Florida Statutes, which they asserted would require a proceeding to determine that there is effective competition and what procedures would be appropriate for the offering of these services.

A major problem with detariffing these services is that the LECs could price below as well as above incremental costs depending on the competitive circumstances of an individual customer. For this reason, and the lack of specifics from the LECs on how detariffing might be implemented, and their inability to describe any particular advantage to be gained by detariffing these services, we find that detariffing private line and special access services is not appropriate.

We find that the LECs have substantial pricing flexibility through the use of CSAs and ICBs, and neither geographically deaveraged rates, banded rates, detariffing, or any changes in COLR obligations are necessary.

B. Completion of LEC Private Line Depooling and Restructure Not Necessary Prior to AAVs' Operation

Most of the LECs have argued that the elimination of the intraLATA interexchange private line pool and the restructure of private line and special access services must be accomplished before AAVs are permitted to operate. If not, they assert, they will be unable to compete adequately.

Pooling of intraLATA interexchange private line revenues has been in existence since well before divestiture. In this pooling arrangement, all the participants charge the same rate for a service. The revenues derived from the service are placed in a pool and then redistributed among the participants at the end of a defined time period. The redistribution is based upon the cost of providing the service.

We agree that pooling is not satisfactory in a competitive environment because the service rates are required to be homogeneous among the companies. A company attempting to meet competition would be unable to adjust its rates to meet this competition.

It is this Commission's intent to eventually eliminate the private line pool. However, the restructure of foreign exchange services (FX) must be completed before this can be undertaken. Therefore, we find no further action appropriate at this time.

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SBT has already begun the restructure of its intraexchange and interexchange private line and special access services. The other LECs concur with SBT's special access tariffs and have, therefore, also started this process. However, they have yet to accomplish this in the intraexchange private line arena. SBT asserts that this must be completed so that the LECs will be prepared to meet competition.

However, because the restructuring of private line services is currently under way, we find no further action necessary at this time.

C. No Change in Policies Regarding Prohibition
Against Resale of LEC Special Access and Billing
of End Users for LEC Special Access

The rebilling of LEC special access by an IXC puts that IXC in the position of reselling LEC special access. For many years it has been argued that LEC special access rates have not covered costs. We have never found it appropriate to permit resale of a service which is priced below costs.

In addition, this Commission's desire for the LECs to have a market presence in the customers' telecommunications service has not changed. In fact, with the presence of other providers of what used to be exclusively LEC services, that concern has probably grown.

Therefore, we find that our policies of prohibiting resale of LEC special access and requiring the direct billing of end users for LEC special access shall continue.

D. No Change Necessary to Address Cross-Subsidization

We believe the likelihood of any cross-subsidization of private line and special access services is very small. First and foremost, this Commission recently completed a major investigation of LEC private line and special access services in Docket No. 890505-TL. We found that, in fact, the rates for certain private line and special access services were below their incremental costs and ordered the LECs to implement new rates. We expect that new rates will be in place for private line services by February 1992 for all LECs except SBT, which has already implemented the restructured rates. Additionally, new rates are being phased in for special access services, with the final phase-in on January 16, 1992. When the final phase-in takes place on January 16, 1992, special access services will cover their costs. Second, for future rate changes, the LECs are required to perform a cost study based

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on the Private Line/Special Access Cost Manual to ensure that their proposed tariffed rates cover their incremental costs. We are presently revising the cost manual in connection with Docket No. 890505-TL. Finally, for any CSAs or ICBs, rates are required to cover incremental costs.

For these reasons, we find that there is little probability of any cross-subsidization taking place by the LECs for private line and special access services. There are sufficient safeguards in place to preclude the LECs from cross-subsidizing private line and special access services.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that each and every specific finding in the body of this Order is reaffirmed in every respect. It is further

ORDERED that Alternate Access Vendors are in the public interest and that certificates for the provision of Alternate Access Vendor services may be granted following the issuance of this Order authorizing operation no earlier than January 1, 1992. It is further

ORDERED that Alternate Access Vendors shall be certificated and shall operate pursuant to the terms and conditions set forth herein until this Commission completes rulemaking applicable to this new category of telephone company. It is further

ORDERED that the bypass restriction is modified as set forth herein.

By ORDER of the Florida Public Service Commission, this 2nd day of AUGUST, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.