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May 29, 1992

ORIGINAL
FILE COPY

Mr. Steve Tribble
Director of Records and
Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399

Re: Docket No. 920218-^{TA}PL - Application of Continental Fiber
Technologies, Inc. for Authority to Operate as an
Alternative Access Vendor Within the State of Florida

Dear Mr. Tribble:

Enclosed for filing are the original and fifteen (15) copies
of Comments of Intermedia Communications of Florida, Inc. in the
above-referenced docket. Also enclosed is a diskette containing
the text of the Petition in Word Perfect 5.1.

Thank you for your assistance in this matter.

Sincerely,

Patrick K. Wiggins
Patrick K. Wiggins

PKW:prl
Enclosures

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05545 MAY 29 1992

FPSC-RECORDS/REPORTING

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of

Continental Fiber Technologies, Inc.
For Authority to Operate as an
Alternative Access Vendor Within
the State of Florida

Docket No.920218-TA

Filed: 5/29/92

COMMENTS OF INTERMEDIA COMMUNICATIONS OF FLORIDA, INC.

Intermedia Communications of Florida, Inc. ("Intermedia"), by its undersigned counsel, submits these comments with respect to the pending application of Continental Fiber Technologies, Inc. ("CFT") for a certificate authorizing it to provide alternative access vendor ("AAV") services within the State of Florida.

I. Background, Statement of Interest, and Purpose.

The CFT application does not indicate the specific geographical areas in which CFT intends to offer AAV services. Based on press reports,¹ however, Intermedia understands that CFT intends to provide alternative access vendor service in the City of Jacksonville, which, as shown in its application, is the site of both its office and its headend. Again, while this information is not indicated in the application of CFT, Intermedia also understands that CFT is affiliated with Continental Cablevision, Inc. ("CCI"), whose affiliate holds a franchise to provide cable television ("CATV") service in the City of Jacksonville.

¹ See Attachment A.

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Intermedia holds a certificate issued by this Commission authorizing it to provide intrastate AAV services throughout the State of Florida. See Order No. 25540, Docket No. 910396-TP (issued Dec. 26, 1991) ("Certificate Order"). Intermedia's certificate became effective January 1, 1992. At this time, Intermedia provides such services in the following cities: Tampa, Orlando, Miami, and Jacksonville. Thus, because CFT will compete directly with Intermedia in the provision of alternative access vendor services in Florida, and, in particular, in Jacksonville, Intermedia is an interested party with respect to the CFT application.

Intermedia's purpose in filing these comments is not to oppose CFT's application for an AAV license. Rather, Intermedia's purpose is to alert the Commission to two potential problems raised by CFT's affiliation with a cable television company and to suggest a solution for each. If the problems are adequately addressed by the Commission, then granting CFT an AAV certificate will be in the public interest because it will promote effective and fair competition in AAV services.

II. Applicability of the Order No. 24877 AAV Service Restrictions.

Intermedia's AAV authorization specifically requires it to comply with the terms of the generic AAV order, Order No. 24877, Docket No. 890183-TL (issued Aug. 2, 1991), reconsideration denied, Order No. 25546 (issued Dec. 26, 1991), and any implementing regulations adopted by this Commission. In particular, pursuant to the express terms of its certificate, Intermedia is prohibited from providing any intraexchange or

interexchange private line services, whether voice, data, or video services, between unaffiliated entities as defined in Order No 24877. Intermedia is also prohibited from providing any special access service that is part of an end-to-end dedicated service to unaffiliated entities, except that it "may provide special access to an interexchange carrier's switched network." See Certificate Order at 2.

While Intermedia does not oppose a grant of the CFT application, Intermedia is concerned that CFT may be confused about the scope of the restrictions of Order No. 24877, which Intermedia believes would be applicable to an AAV operating its alternative access service in whole or in part in conjunction with or via the Jacksonville cable television system operated by CFT's affiliate. Intermedia understands that representatives of CFT have indicated that, due to CFT's relationship with the cable operator in Jacksonville, in contrast to Intermedia, CFT will be able to offer video conferencing and other private line services between unaffiliated entities.

As suggested above, however, it is Intermedia's understanding that such an offering would violate the provisions of Order No. 24877, and thus would be unlawful. As shown below, if Intermedia's understanding is correct, either the cable operator would be offering AAV services without a certificate, or, in the event it received a separate certificate, could only be offering such service in violation of the mandatory terms of a certificate.

III. Any Grant of the CFT Application Should Be Conditioned on Compliance With the Requirements of Order No. 24877.

In the grant of any new AAV certificate, the Commission should be explicit about the ground rules under which the AAV will operate. In this context, this means that any grant of the CFT application should be conditioned on compliance with the requirements of Order No. 24877, as well as any other requirements the Commission deems appropriate to promote the public interest.

The Commission has ample jurisdiction to impose such conditions on an entity seeking certification. Section 364.01, Florida Statutes, confers on this Commission jurisdiction over all telecommunications companies, including jurisdiction over any two-way telecommunications services offered by CFT's Jacksonville CATV affiliate.² Section 364.02(7) excludes from the definition of a "telecommunications company" only "a cable television company providing cable service as defined in 47 U.S.C. 522," but, consistent with the limited scope of the federal preemption of regulation of cable television service, does not restrict this Commission's jurisdiction over cable operators' non-cable services. Section 522 of the Communications Act of 1934 as amended, 47 U.S.C. § 522, limits the definition of "cable service" to:

(A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and

(B) subscriber interaction, if any, which is required

²The only exceptions are two-way services incidental to the provision of traditional cable television services, such as remote ordering of pay-per-view programs or polling of subscribers in connection with video programming.

for the selection of such video programming or other programming service.³

Moreover, the 1984 Cable Act, of which Section 522 is a part, also makes clear that in enacting federal legislation regulating cable television services, Congress did not intend to restrict the authority of state regulatory authorities such as this Commission to regulate any non-cable service offerings of cable television system operators, including alternative access vendor services.⁴

Thus, any telecommunications services offered by CFT's CATV affiliate, regardless of whether they utilize facilities also utilized to provide cable service, are subject to the certification and other regulatory requirements of this Commission. See § 364.337(3)(b), Florida Statutes. Any alternative access vendor services provided by either CFT or a CATV affiliate are thus also subject to the general restrictions on the provision of service to unaffiliated entities of Order No. 24877, which this Commission has found to be required by the terms of Sections 364.335 and 364.337. See Order No. 25546 at 2. Therefore, in order for CFT to offer AAV services in conjunction with a CATV affiliate, that affiliate must also receive a certificate, and, like all other alternative access vendor certificates, that certificate must incorporate the unaffiliated entity restrictions.

³Florida statutes concerning cable television, including that governing municipal franchising, echo the definition of the federal statute. See F.S.A. § 166.046(1)(a); F.S.A. § 337.4061(1)(a).

⁴See the Cable Act, which expressly provides that the Act was not to be deemed to affect state jurisdiction over non-cable services provided through a cable system. Pub. L. 98-549, 98 Stat. 2780, 2801, reprinted at 47 U.S.C. § 541(d)(2).

IV. Any AAV Certificate Granted To CFT Must Incorporate Prophylactic Provisions That Will Inhibit Anti-Competitive Behavior Such As Cross-Subsidization.

Intermedia is also concerned that there is substantial opportunity for cross-subsidization of the alternative access vendor business services offered by CFT in conjunction with its CATV affiliate by revenues and services of that CATV system which provides cable service to residential subscribers. Significantly, because the City of Jacksonville is served by more than six television broadcast stations, the CATV operator, despite its substantial market power in the distribution of video programming in Jacksonville, amounting to a de facto monopoly for most consumers, is exempt under federal law and the regulations of the Federal Communications Commission from rate regulation by the City of Jacksonville.

While rates for the Jacksonville cable television service are not subject to this Commission's jurisdiction, this Commission does have authority to incorporate in any alternative access vendor certificate awarded to CFT or to the CATV affiliate a requirement that there be no cross-subsidization of the alternative access vendor services by cable television services. It may also adopt other measures designed to enforce that requirement. In particular, Section 364.01(d) obligates the Commission to prevent anticompetitive behavior. See also Sections 364.01(e), 364.338(3), Florida Statutes (evinced the legislative concern about anticompetitive behavior). Moreover, in enacting Section 364.3381, prohibiting local exchange carriers from cross-subsidizing competitive services with monopoly services, the

legislature of this State demonstrated its particular concern that a telecommunications company's captive customers not bear heavier rates in order to enable the company to price its competitive services below-cost.

There is little prospect of cross-subsidization by monopoly services of AAV services offered by an independent alternative access vendor such as Intermedia, which offers no de jure or de facto monopoly services. With respect to an AAV affiliated with a cable television operator, however, there is the same prospect of harm to consumers as in the case of a local exchange carrier offering both monopoly and competitive services. The cable company can use high revenues from residential consumer services to subsidize its AAV business services unless such services are required to bear the fully distributed costs of their operation.

If a cable company were to cross-subsidize its competitive AAV services with revenues from its residential consumer services, other AAVs and the local exchange companies would be harmed by the unfair competition. Simply put, an AAV such as Intermedia cannot cross-subsidize (again, Intermedia has no captive customers from which to extract the subsidies) and the LECs are prohibited from cross-subsidizing. Cable companies should compete under the same restriction. Unless safeguards are imposed ensuring that neither the cable company nor the LEC may cross-subsidize, the resulting competition in AAV type services will not be in the public interest, but rather mutually destructive.

Intermedia suggests that the Commission impose a simple condition on cable companies that no AAV service may be offered or provided below its long range incremental costs. This is the

standard traditionally imposed on the LECs for such services, whether they be offered under tariff or contract service arrangements. The mechanism for enforcing this condition need not be specified at this time, and could be reserved for the Commission's proceeding to adopt AAV rules. From Intermedia's perspective, the key at this juncture is to ensure that the above condition be explicitly imposed in any grant of an AAV certificate to a cable company or affiliate.


Section 364.337(1)(a) authorizes the Commission to make appropriate distinctions among telecommunications companies in awarding certificates, and Section 364.337(2)(e) authorizes the Commission to consider various public interest factors in imposing specific conditions in telecommunications certificates. Thus, the Commission is fully empowered through the certification process to preclude the relationship between CFT and Continental Cablevision from leading to cross-subsidization and other anti-competitive behavior.⁵

⁵See also *Microtel, Inc. v. Florida Public Service Commission*, 464 So.2d 1189 (Fl. 1985) (interpreting F.S.A. § 364.335(1) and noting that the statute authorizing the Commission to impose special requirements in certificates of competitive service providers is intended to protect consumers).

Conclusion

If the Commission grants the application of CFT to provide alternative access vendor services, it should ensure that any certificate it awards expressly requires full compliance with the terms of Order No. 24877 regardless of whether any service is provided in conjunction with a cable television system. Moreover, the Commission should adopt such measures as may be appropriate to protect the public interest and ensure that the alternative access vendor services offered by CFT are not cross-subsidized by the cable television services offered by CFT's Continental Cablevision CATV affiliate in Jacksonville.

Respectfully submitted,


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Attorneys for
Intermedia Communications of
Florida, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 1992, a copy of the foregoing "Comments of Intermedia Communications of Florida, Inc." was delivered by mail, postage prepaid, as indicated, to the parties on the listed below:

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Counsel for
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Patricia Kelly

ATTACHMENT A

NEWS

More Alts in Florida

Maclean Hunter, Comcast may join Continental, Adelphia

BY CARL WEINSCHENK

Continental Cablevision and Adelphia Communications, the two companies whose subsidiaries have developed an alternate access business in Jacksonville, are talking with Maclean Hunter Cable Television, as well as Comcast Corp., about a second Florida project.

Details are sketchy on the new project, but conversations center on opportunities in the areas around West Palm Beach and Riviera Beach in Palm Beach County, north of Miami.

The talks are interesting because they indicate Florida, due to a relatively open regulatory environment, may be a hot market for alternate access projects.

South Florida, where Comcast and Maclean Hunter have systems, is particularly interesting to the partners because of the number of businesses there.

"We have gotten together to discuss it (and) we are in the process of researching it," said Jeff DeLorme, Continental's senior vice president. "I would think we would know where we are going by the end of June."

He said he didn't know whether the deal would be done through Adelphia's Hyperion Telecommunications.

The likelihood of a June decision was verified by Dick Kreeger, the vice president and general manager of Selkirk Communications' greater Fort Lauderdale complex. Maclean Hunter owns Selkirk.

"Certainly, there are conversations going on," Kreeger said. "We feel the possi-

Conversations center on opportunities around West Palm Beach and Riviera Beach.

bility a reasonable amount of business can be acquired. The ability to have end-to-end-type situation is better than multiple companies."

Executives at Comcast, as well as at Hyperion Telecommunications, declined to comment last week.

Alternate access systems link businesses to their long-distance telephone carriers by bypassing the local telephone companies.

Access initiatives

The discussions are also another indication that Teleport Communications Group Ltd. — soon to be owned by Cox Enterprises Inc. and Tele-Communications Inc. — may not come to dominate cable's alternate access initiatives.

MSO executives are generally reticent to comment about the Cox/TCI partnership. What appears clear, however, is that many local systems and MSOs won't hesitate to work with neighboring operators to seize alternate access opportunities.

The talks help reinforce Florida as an early stage for cable's new desire to become the major player in alternate access. That's also due to a lack of competition, as well as a lax regulatory environment.

According to Steve Wilkerson, president of the Florida Cable Television Association, state statute No. 364 allows cable companies, through subsidiaries such as Hyperion, to secure the appropriate alternate access license free of many of the obstacles facing telephone companies.

Easier vendor license

The law, Wilkerson said, "in essence makes it easier to get an alternate access vendor license than probably virtually anywhere else in the country."

According to an official with the state's division of telecommunications, four requests for public convenience and necessity certificates — in essence, alternate access licenses — have been filed since the state began to accept applications about a year ago.

Besides Hyperion and Continental, Intermedia Communications and Commercial Communications Systems Inc. have filed applications.

Florida's attractiveness is heightened even more because each request granted allows any number of projects without subsequent approval.

"The public policy of the state is essentially to recognize and encourage alternate access vendors to make more than one transmission network potentially available," Wilkerson said.

Corning Inc. Fine-Tunes Fiber Products Line

BY CARL WEINSCHENK

Corning Inc.'s opto-electronics group has made a change aimed at making fiber field work much more efficient, according to Jon Chester, the company's cable television marketing director.

Corning is manufacturing several of its single fiber products with an outer cladding diameter of 125.0, plus or minus 1.0 microns, instead of to 125.0, plus or minus 2.0 microns.

Although it may not seem notewor-

thy to non-engineers, the 50 percent improvement will have positive ramifications on the system engineering level, according to Chester.

The new measurements will let technicians in the field "achieve higher yields at lower loss per splice or higher yields at specific loss budget level per splice."

In other words, the capability to match fiber more accurately when splicing two ends together will reduce the light lost by microscopically imperfect connections.

That will enable either more splices with a set and acceptable amount of lost light or better overall performance for the set number of splices necessary to do a job. That's crucial as fiber moves toward the network's feeder portion, and fiber connection and splicing become more prevalent, Chester said.

Chester said five years of research went into the project. Photon Kinetics developed the equipment to measure the diameter. A micron is one millionth of a meter.

6-COMMUNICATIONS DAILY

FRIDAY, APRIL 24, 1992

Saiman Al-Foumi, Ministry of Communications, Kuwait, deputy chmn... Sandy Tepalidis promoted by MCA TV to dir.-operations and promotion, Creative Services Dept.

TELCO/CABLE

Continental Cablevision formed alternative access joint venture with Hyperion Communications to serve Jacksonville area, companies said. Venture will use Continental's fiber infrastructure, as well as laying new fiber, to provide local access telephone voice and data connections between commercial customers and long distance carriers. "A substantial portion of the network already exists and is being used to transport video," Continental Senior Vp Jeffrey DeLorme said. Customers also will be able to lease point-to-point communication circuits and use network to interconnect LANs. Network, which will use Synchronous Optical Network Transport System, is to be operational in June. Hyperion is new Fla.-based firm headed by former Penn Access officials Charles Drenning, Randolph Fowler, Paul Fajerski.

Bell Canada Enterprises (BCE) has bought out Pacific Telcel's stake in 6 U.K. cable franchises, as expected (CD March 26 p6). In addition to PacTel's 44.5% of East London Telecommunications (ELT), BCE bought enough of Jones Interable holdings to give it majority of ELT. However, Jones will remain managing partner of ELT, which has franchise to pass about 630,000 homes in London area. Financial details weren't disclosed. BCE also owns 30% of Videotron Corp., which has U.K. cable franchises for 1.1 million homes in London and Southampton areas. PacTel had said earlier that it was interested in selling ELT because its buyout of Masada systems had allowed it to reach goal of one million U.K. cable homes and it wanted effective control of cable systems in which it had stake.

MASS MEDIA

CBS Chmn. Laurence Tisch was paid total of \$1,505,422 in 1991 -- \$927,885 salary, \$455,000 bonus and \$122,537 in payments for supplemental life insurance, according to proxy statement issued in advance of May 13 shareholders meeting. CBS Bcat. Group Pres. Howard Stringer made \$936,486 -- \$640,577 salary and \$280,000 bonus. Statement also details 3-year contract running through July 31, 1994, that Stringer signed last year. He will be paid in succeeding years aggregate salary and bonus of \$950,000, \$1 million and \$1.05 million, with possibility of additional bonus each year. Peter Lund, CBS Bcat. Group exec. vp-Mktg. Div. pres., made \$902,701 in 1991, including \$250,000 payment "to compensate him for the loss of a bonus from his previous employer" (Multimedia). Lund is guaranteed \$650,000 in aggregate salary and bonus for current contract year and \$700,000 in each of following 2 years. Entertainment Div. Pres. Jeffrey Szymanski was paid \$751,134 last year, and is guaranteed minimum of \$750,000 in salary and bonus annually for 4-1/2 year contract not yet finalized. News Div. Pres. Eric Ober made total of \$625,004 last year. He is getting \$425,000 salary for current year ending Aug. 31, \$475,000 in each of following 2 years. His minimum bonus is \$191,250 for calendar 1992, \$213,750 for each of following 2 years.

FCC heated day-long conference in Washington Thurs. of its advisory committee on Emergency Broadcast System (EBS), with Chmn. Sikes and Emergency Commissioner Barrett addressing group. Sikes, who shifted EBS from jurisdiction of Mass Media Bureau to Field Operations Bureau (FOB) when he became chmn. 3 years ago, said Commission and outside advisers are in position to go beyond fine-tuning and to "dramatically improve" EBS. He said his own broadcast experience underscores importance of taking new look and "invigorating" system. Currently pending at FCC are both inquiry and rulemaking into improving EBS. Barrett said "flexibility and redundancy" will become "increasingly important" in EBS in months and years ahead. He praised broad range of industries represented on committee and said that "as new technologies unfold," it's important for FCC to have views from representatives of broadcast, cable and telephone industries. Committee, which last met in 1987, will make recommendations to Commission for EBS improvements. FOB Chief Richard Smith said his Bureau is well positioned to handle emergency broadcasting with 35 field offices from P.R. to Hawaii. He said there still are many gaps in system, such as (1) fact that emergency signals aren't carried by cable and (2) periods when home sets are using VCRs or are tuned to cable. FCC has been hosting regional EBS workshops, last in conjunction with NAB convention, next in Dallas next month tied in with NCTA convention. Smith said stations' participation should remain voluntary, not required by govt.

Radio Chattanoga, licensee of WGOW(AM)/WSKZ(FM) Chattanooga, has been fined \$11,000 for violations of FCC's equal employment (EEO) rules. At same time, stations' licenses were renewed subject to EEO reporting requirements.

Ad-supported Channel One high school newscast service was only marginally helpful in improving students' knowledge of current affairs, according to study commissioned by parent Whittle Communications. Study by Je-