



Florida Cable Television Assoc., Inc.

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October 22, 1993

HAND DELIVERY

Mr. Steven C. Tribble
Director of Records & Reporting
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, Florida 32301

RE: Docket No. 921074-TP

Dear Mr. Tribble:

Enclosed for filing in the above-referenced docket are an original and fifteen copies of the Florida Cable Television Association, Inc.'s Posthearing Brief.

Also enclosed is a copy of the Posthearing Brief on 5 1/4" high density diskette generated on a DOS computer in Word Perfect 5.1 format.

Please acknowledge receipt and filing of the above by date-stamping the duplicate copy of this letter and returning the same to me.

Thank you for your assistance in processing this filing.

Yours very truly,

Laura L. Wilson
Laura L. Wilson
Regulatory Counsel

Enclosures

cc: All Parties of Record
Mr. Steven E. Wilkerson
Mr. Robert J. Brillante

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7733-RECORDS/REGISTRATION

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of INTERMEDIA)
COMMUNICATIONS OF FLORIDA, INC.)
for expanded interconnection for)
AAVs within LEC central offices.)

Docket No. 921074-TP
Filed: October 22, 1993

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**FLORIDA CABLE TELEVISION ASSOCIATION, INC.'S
POSTHEARING BRIEF**

The Florida Cable Television Association, Inc. ("FCTA"), pursuant to Rule 25-22.056, Florida Administrative Code, respectfully submits the following Posthearing Brief to the Florida Public Service Commission ("Commission") in the above-captioned docket.

I. BASIC POSITION

Under Chapter 364, Florida statutes, the Commission has the authority to authorize expanded interconnection for alternative access vendors within the local exchange company central offices. Expanded interconnection is undeniably in the public interest and should be required. Just as leased access to a cable television operator's network is mandated by the FCC, the carrier of last resort for telecommunications services should be required by the Commission to provide expanded interconnection. This will insure that all customers have affordable access to telecommunications services on a non-discriminatory basis.

II. ISSUES AND POSITIONS

ISSUE 1: Is the expanded interconnection for special access and/or private line in the public interest?

Yes. Expanded interconnection is in the public interest because it will promote competition and thereby afford numerous benefits to consumers.

The Commission will foster telecommunications competition by requiring expanded interconnection for special access and/or private line. The result of such competition will be significant benefits to consumers in Florida. Therefore, expanded interconnection is in the public interest.

State public utility commissions permitting expanded interconnection and the FCC have found that a wide range of public interest benefits will accrue from collocation by removing unnecessary barriers to increased competition. *Canis, Tr. 22; Expanded Interconnection with Local Telephone Company Facilities, FCC Docket 91-141, 7 FCC Rcd 7269, 7472 (1992) (hereinafter referred to as "FCC Order")*. These consumer benefits include more rapid deployment of new technology, system redundancy and increased protection against disastrous service outages, increased service innovation and greater customer choice, and price competition that will reduce the cost of telecommunications services to all customers. *Canis, Tr. 22, 102, 105; See also, Kouroupas, Tr. 243-244*. For all these reasons, the Commission should determine that expanded interconnection is in the public interest.

ISSUE 2: How does the FCC's order on expanded interconnection impact the

Commission's ability to impose forms and conditions of expanded interconnection that are different from those imposed by the FCC's order?

Stipulated.

ISSUE 3: Under what circumstances should the Commission impose different forms and conditions of expanded interconnection?

Stipulated.

ISSUE 4: Does Chapter 364 Florida Statutes allow the Commission to require expanded interconnection?

Yes. The Commission has been granted the statutory authority to require expanded interconnection.

Consistent with the authority conferred upon the Commission under Chapter 364, Florida Statutes, the Commission may lawfully require expanded interconnection. Specifically, Section 364.01, Florida Statutes, grants the Commission "exclusive jurisdiction" over telecommunications services. In addition, Section 364.16, Florida Statutes, authorizes the Commission to require connections between two or more telecommunications companies where connections can reasonably be made, efficient service obtained and such connections are necessary. When read in conjunction with the other sections authorizing the Commission to certify competitive providers and to promote competition as well as modern and efficient network, Section 364.14, Florida Statutes, permits the Commission to order the LECs to permit competitors to interconnect with their networks

so that competitors can reach all consumers. Kouroupas, Tr. 251-252.

ISSUE 5: Does a physical collocation mandate raise federal or state constitutional questions about the taking or confiscation of LEC property?

No. A physical collocation mandate does not raise federal or state constitutional questions about the taking or confiscation of LEC property.

The LECs' assertions that mandatory physical collocation raises federal or state constitutional questions about the taking or confiscation of LEC property are without merit. Kouroupas, Tr. 252. First, as stated previously, expanded interconnection is in the public interest, and requiring it is within the Commission's statutory authority. Mandating physical collocation, therefore, constitutes lawful governmental regulation. In addition, interconnectors will fairly compensate the LECs for the use of their facilities. For these reasons, the Commission should reject the LECs' position and mandate physical collocation.

ISSUE 6: Should the Commission require physical and/or virtual collocation?

Yes. The Commission should require Tier 1 LECs to offer physical collocation as a tariffed, generally available service. Virtual collocation should be required where physical collocation is not possible.

A physical collocation requirement will promote competition as well as fairness among all parties. First, such a requirement will correct the disproportionate bargaining power presently enjoyed by the LECs in negotiating collocation arrangements. As

monopoly providers, the LECs have an overwhelming advantage in establishing interconnection arrangements and in tariffing interconnection terms and conditions. Hearing Exhibit No. 8, Teleport's Responses to Staff's First Set of Interrogatories, at 13. A mandatory physical collocation policy is by far the most efficient, effective, and pro-competitive action that the Commission could take. Hearing Exhibit No. 4, Deposition of John Canis, at 11.

Second, a physical collocation requirement will ensure that competitors are provided interconnection on the same terms and conditions as the LECs interconnect their own high capacity networks. Kouroupas, Tr. 253. Requiring physical collocation will permit the collocator, rather than the LEC, ultimate discretion in deciding how and when equipment will be deployed and, most importantly, in setting performance standards for services and personnel. Canis, Tr. 31. Decisions such as these define the type and quality of the service an AAV provides and should be left to the AAV. Accordingly, the Commission should require Tier 1 LECs to provide physical collocation.

A virtual collocation requirement, in contrast, would perpetuate the LEC bottleneck and deny AAVs the ability to control some of the most important aspects of their businesses. *Id.* Therefore, virtual collocation should only be required when space for a physical collocation becomes exhausted.

ISSUE 7: What LECs should provide expanded interconnection?

Only Tier 1 LECs should be required to provide expanded interconnection.

In Docket No. 91-141, the FCC required Tier 1 LECs to provide expanded interconnection. FCC Order at 7398-7399. Tier 2 LECs are much smaller companies, are

differently situated than Tier 1 LECs, and may not have the ability to provide collocation space to interconnectors. Canis, Tr. 118; Beauvais, Tr. 336, 370-371. In addition, it is unlikely that there would be great demand for expanded interconnection in the smaller LEC areas, at least in the near future. FCC Order at 7398. The Commission should, therefore, adopt the FCC requirement that only Tier 1 LECs be required to provide expanded interconnection. Rock, Tr. 446-447; Carroll, Tr. 662; Eudy, Tr. 677; Guedel, Tr. 198.

ISSUE 8: Where should expanded interconnection be offered?

Expanded interconnection should be tariffed for those central offices where it is likely to occur. If additional locations are requested, they should be added. For consistency, the intrastate serving wire centers should match those approved for interstate expanded interconnection.

The FCC determined that collocators should be allowed to interconnect in LEC central offices in areas most likely to experience competitive entry. FCC Order at 7398. Tier 1 LECs typically control the large monopoly bottlenecks and are located in large metropolitan areas. Rock, Tr. 447. Interconnectors should have access to such central offices to afford as many customers as possible the advantages of expanded interconnection. In addition, interconnectors should be allowed to meet future customer demand. Canis, Tr. 629. Therefore, if additional locations are requested they should be added. For consistency, the intrastate serving wire centers should match those approved for interstate expanded interconnection.

ISSUE 9: Who should be allowed to interconnect?

Stipulated.

ISSUE 10: Should the same terms and conditions of expanded interconnection apply to AT&T as apply to other interconnectors?

Stipulated.

ISSUE 11: Should the Commission require standards for physical and/or virtual collocation? If so, what should they be?

Yes. The Commission should require a standard that would allow interconnection in a manner which is technically, operationally, and economically comparable to the way the LEC connects its own facilities.

The Commission should require standards for physical and/or virtual collocation that essentially mirror those imposed by the FCC. This would allow for uniformity between state and federal requirements and would minimize diseconomies. Canis, Tr. 54, 141. It must be recognized in establishing standards that, as monopoly providers, the LECs currently have an overwhelming advantage in establishing interconnection arrangements and in tariffing interconnection terms and conditions. Hearing Exhibit No. 8, Teleport's Responses to Staff's First Set of Interrogatories, at 13. Adopting standards such as those imposed by the FCC is absolutely necessary to ensure that interconnection is provided by the LECs in a manner that is technically, operational, and economically comparable to the way that the LEC connects its own facilities. This degree of parity must exist if true competition is to be accomplished. Canis, Tr. 56, 143.

ISSUE 12: Should collocators be required to allow LECs and other parties to interconnect with their networks?

No. The FCC's expanded interconnection requirement applies to Tier 1 LECs only. In addition, Congress has enacted a federal scheme governing the manner in third parties access cable systems.

Collocators should not be required to allow other parties, including the LECs, to interconnect to their network for the reasons that follow.

First, the FCC's expanded interconnection requirement applies to Tier 1 LECs only. FCC Order at 7398. The reasoning underlying the FCC's requirement for Tier 1 LECs is clearly not applicable to collocators. The FCC's decision was driven, in part, by the goals of (1) encouraging LEC efficiency and deployment of new technologies that facilitate innovative service offerings (FCC Order at 7380); (2) making the LECs more responsive to customers in the provision of existing services (id.); and (3) removing the barriers to entry constructed by the existing monopoly (Guedel, Tr. 198, 200). In sum, the FCC sought to ensure fairness to LEC competitors by making interconnection available on terms and conditions comparable to what the LECs provide themselves. FCC Order at 7390-7391.

This Commission, like the FCC, is squarely faced with the task of transitioning the entry of potential LEC competitors into a previously monopoly market. No LEC competitors currently possess monopoly bottleneck facilities. Guedel, Tr. 200. To the contrary, the record evidence reveals that the provision of competitive services remains a nascent industry -- nationwide AAV gross revenues represent less than 1% of the market for access services which remains dominated by the LECs. Canis, Tr. 21. Therefore, to transition into fair competition, it is not necessary to impose safeguards on collocators. The interconnection requirements proscribed by the LECs, in contrast, would have the

effect of frustrating rather than encouraging the development of competition. Canis, Tr. 56.

The record evidence underscores the significance of the LECs' current market power and the necessity of imposing expanded interconnection requirements upon only the LECs. Witness Kourpouas testified that while the LECs should be required to provide physical collocation, non-dominant carriers need no such requirement. Kouroupas, Tr. 114. Witness Canis, clarifying Intermedia Communications of Florida, Inc.'s ("ICI") position on this issue, did not disagree with Witness Kouroupas' statement. Canis, Tr. 115. He further testified that while ICI will consider bona fide requests for collocation from the LECs or other parties, collocators should not be required to give interconnection in return to the LECs. Canis, Tr. 114.

A second reason why this Commission should not impose a reciprocal interconnection requirement upon collocators is that Congress has established a federal scheme through channel leasing to assure access to "cable systems"¹ by third parties unaffiliated with a "cable operator."² Specifically, Section 47 U.S.C. 532(c) (1993) provides, in pertinent part:

(1) If a person unaffiliated with the cable operator seeks to use channel capacity designated pursuant to subsection (b) of this section for commercial use, the cable operator shall establish, consistent with the purpose of this section and with

¹The term "cable system" is generally defined as "a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community . . ." 47 U.S.C. 552(7) (1993).

²The term "cable operator" is defined as "any person or group of persons (A) who provides cable service over or cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system." 47 U.S.C. 552(5) (1993).

rules prescribed by the Commission under paragraph (4), the price, terms and conditions of such use which are at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system. (Emphasis supplied.)

In addition, Section 47 U.S.C. 532(4)(A) (1993) provides:

The Commission shall have the authority to -

(I) determine the maximum reasonable rates that a cable operator may establish pursuant to paragraph (1) for commercial use of designated channel capacity, including the rate charged for the billing of rates to subscribers and for the collection of revenue from subscribers by the cable operator for such use;

(II) establish reasonable terms and conditions for such use, including those for billing and collection; and

(III) establish procedures for the expedited resolution of disputes concerning rates or carriage under this section. (Emphasis supplied.)

The above provisions preclude this Commission from establishing the terms and conditions upon which cable operators open their networks to third parties. The FCC has specifically found that commercial leasing of cable channels serves important diversity and competitive objectives such that centralized regulatory oversight would assist in the achievement of the statutory directives. In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, Released May 3, 1993, at 303-307. Because the terms and conditions under which cable operators lease channel capacity are to be administered by the FCC, this Commission is preempted from imposing its own set of expanded interconnection requirements upon collocators that are cable operators.

ISSUE 13: What standards should be established for the LECs to allocate space for collocators?

Standards should be established for space allocation and exhaustion, the point of interconnection, equipment placed in central offices, interconnection of non-fiber technologies, and the provision of collocation at service wire centers.

The following standards are supported by the record and appropriate for the Commission to establish:

1. Space Allocation and Exhaustion – The Commission should adopt the FCC approach regarding the allocation of central office space. Canis, Tr. 119-121, Guedel, Tr. 198. The FCC mandates physical collocation with the exception of two instances: (1) voluntarily negotiated arrangements for virtual collocation, and (2) upon a LEC demonstration, to the FCC's satisfaction, that a central office lacks adequate space for physical collocation. Canis, Tr. 137-138.

The LECs should be required to provide space for a physical collocation until the central office is filled to capacity. Kouroupas, Tr. 263. When space for a physical collocation is exhausted, the LECs should be required to provide virtual collocation to requesting interconnectors after a Commission determination that, in fact, the space is exhausted. Canis, Tr. 50. In addition, the LECs should be required to offer central office space on a first come, first served basis. Rock, Tr. 449.

2. Point of Interconnection – In the case of physical collocation, the point of interconnection, or the "operational demarcation", should be placed inside the central office. Canis, Tr. 135. In the case of virtual collocation, this point should be placed in a public right-of-way that is accessible to all potential

Interconnectors and is as close to the central office as possible. Rock, Tr. 448.

3. Equipment Placed in Central Offices by or for Interconnectors – The LECs should be required to allow collocation of equipment necessary to terminate basic transmission facilities, including optical terminating equipment and multiplexers. Rock, Tr. 448.

4. Interconnection of Non-fiber Technologies – The LECs should be required to make expanded interconnection available to fiber technologies as well as non-fiber technologies such as microwave facilities. Rock, Tr. 449.

5. LEC Offices at which Interconnection is Available – The LECs should be required to provide expanded interconnection at servicing wire centers (SWCs) and offices.

ISSUE 14: Should the Commission allow expanded interconnection for non-fiber optic technology?

The LECs should be required to make expanded interconnection available to fiber technologies as well as non-fiber technologies.

Expanded interconnection should be required for non-fiber technology on the same basis as fiber technology. Guedel, Tr. 215. The allocation of space to the non-fiber technology would be treated on a first-come-first-served basis. If the central office reaches capacity, the LEC should then allocate space to the fiber and non-fiber collocators on a virtual collocation basis.

ISSUE 15: If the Commission permits expanded interconnection, what pricing flexibility

should the LECs be granted for special access and private line services?

The LECs currently enjoy substantial pricing flexibility undercurrently imposed restrictions. No further pricing flexibility is appropriate.

The Commission has already granted the LECs substantial intrastate pricing flexibility. For example, no services have been deemed "effectively competitive." When a LEC offers a monopoly service pursuant to a Contractual Service Arrangement ("CSA") under its Private Line Tariff, the LEC currently enjoys virtually unfettered price flexibility due to the fact that CSAs are enormously complex, difficult to review, and receive little, if any, Commission scrutiny. CSAs, therefore, provide the LECs with more than enough pricing flexibility. It should be remembered that, despite the LECs sweeping and completely unsupported allegations in this docket, the provision of AAV service does not yet pose a substantial threat to the LECs. *Canis, Tr. 21*. The LECs currently have the ability to respond to what they have broadly alleged to be "competition" for the monopoly network in this proceeding. The FCTA submits that no further pricing flexibility for LEC monopoly services is appropriate at this time.

ISSUE 16: If the Commission permits collocation, what rates, terms and conditions should be tariffed by the LEC?

No position.

ISSUE 17: Should all special access and private line providers be required to file tariffs?

No. The Commission should exempt AAVs from tariff filing requirements as it did in Order No. 24877.

The Commission appropriately requires the LECs to file tariffs as LEC customers are captive, and the LECs have strong incentives to cross-subsidize competitive services with monopoly revenues. In contrast, AAV services are priced according to the dictates of the market rendering a tariffing requirement superfluous. *Canis, Tr. 53*. Further, as recognized by the Commission in Order No. 24877, AAV customers are generally sophisticated users who do not need expansive Commission protection. *Id.* For these reasons, the Commission should not require that special access or private line providers file tariffs.

ISSUE 18: What separations impact will expanded interconnections have on the LECs?

No position.

ISSUE 19: Should expanded interconnection be subject to a "net revenue test" requirement in order to avoid possible cross-subsidy concerns?

Issue deleted by stipulation of the parties.

ISSUE 20: How would ratepayers be financially affected by expanded interconnection?

The ratepayers would not be financially harmed by expanded interconnection.

The FCTA submits that ratepayers will not be financially harmed by expanded interconnection. The overall effect of expanded interconnection and competition will produce a more efficient LEC, result in lower prices, and generate greater quality and benefits to the end user. Kouroupas, Tr. 243-244; Canis, Tr. 22.

ISSUE 21: Should the Commission grant ICI's petition?

Yes. The Commission should grant ICI's petition and order expanded interconnection.


The Commission should grant ICI's petition and allow ICI to interconnect under the terms and conditions for expanded interconnection developed in this proceeding. Granting ICI's petition will benefit the public, facilitate customer choice, and encourage the development of new and innovative services. Guedel, Tr. 194; Canis Tr. 55; Kouroupas, Tr. 268; Rock, Tr. 442.

III. CONCLUSION

The Commission has the statutory authority to require expanded interconnection, and the record demonstrates that such action will foster competition in the public interest. Therefore, the Commission should require Tier 1 LECs to provide expanded interconnection on terms that mirror the FCC's expanded interconnection requirements.

Respectfully submitted this 22nd day of October, 1993.

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By: 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Posthearing Brief has been furnished by United States Mail, and/or by Hand Delivery (*) this 22nd day of October, 1993 to the following parties of record:

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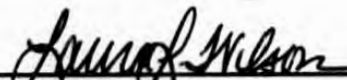
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