FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

JANUARY 6, 1994

TO : **DIRECTOR, DIVISION OF RECORDS AND REPORTING**

FROM : **DIVISION OF COMMUNICATIONS [REITH, MCCABE, CHASE, YATES]**

DIVISION OF AUDITING AND FINANCIAL ANALYSIS [DAVIS]

DIVISION OF LEGAL SERVICES [MURPHY]

RE : **DOCKET NO. 921074-TP, PETITION OF INTERMEDIA COMMUNICATIONS OF FLORIDA, INC. FOR EXPANDED INTERCONNECTION FOR AAVS WITHIN LEC CENTRAL OFFICES.**

AGENDA: **JANUARY 18, 1994 - CONTROVERSIAL - PARTIES MAY NOT PARTICIPATE**

CRITICAL DATES: **NONE**

SPECIAL INSTRUCTIONS: **I:\PSC\CMU\921074.RCM**

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LIST OF ACRONYMS USED IN RECOMMENDATION

ATT-C	AT&T Communications of the Southern States
BR	Brief
CPE	Customer Premises Equipment
EXH	Exhibit
FCC	Federal Communication Commission
FCTA	Florida Cable Television Association
FIXCA	Florida Interexchange Carriers Association
FPSC	Florida Public Service Commission
GTEFL	GTE Florida Incorporated
ICI	Intermedia Communications of Florida, Inc.
IXC	Interexchange Carrier
LEC	Local exchange company
OPC	Office of Public Counsel
POP	Point-of-Presence
SBT	Southern Bell Telephone Company
Sprint	Sprint Communications Company Limited Partnership
TR	Transcript

EXECUTIVE SUMMARY

On September 17, 1992, the Federal Communications Commission (FCC) mandated that all Tier 1, local exchange companies (LECs) (those with revenues over $100 million annually) offer interstate expanded interconnection through physical arrangements to all interested parties in most cases. The FCC's requirement to provide expanded interconnection did not include non-Tier 1 LECs. Subsequently, Intermedia Communications, Inc. (ICI) filed a Petition with the Florida Public Service Commission requesting that LECs be mandated to file tariff revisions to allow alternative access vendors (AAVs) to provide authorized intrastate services through physical collocation arrangements that will be established within LEC central offices.

Staff recommends that the Commission find expanded interconnection for special access and private line service to be in the public interest. In principle, all the parties to this proceeding agreed that expanded interconnection will facilitate competition in the private line and special access markets. Competition in these markets should benefit end users through increased customer choice, introduction of new services and technologies, price competition, diversification and network redundancy, private investment in the Florida infrastructure, increased service and quality, and greater responsiveness to end user needs.

The major LECs contend that expanded interconnection is in the public interest only if LECs are granted the option to offer physical or virtual collocation, and if LECs are granted pricing flexibility. However, staff does not believe that the Commission must grant the LECs' proposals in order to find expanded interconnection in the public interest. Staff recommends that the Commission mandate physical collocation under tariff, to all interconnectors upon request for the purpose of installing, maintaining and repairing terminating equipment and mulitplexers associated with the provisioning of private line and special access services. However, staff recommends that parties be allowed to negotiate virtual collocation arrangements if an interconnector prefers virtual collocation over physical collocation. This policy is consistent with the interconnection policy adopted by the FCC in its interstate expanded interconnection proceeding. Further, staff presents a primary and an alternative recommendation regarding pricing flexibility for the LECs. In the primary recommendation, staff recommends that the Commission endorse the "zone pricing" concept adopted by

the FCC in its interstate proceeding. If the Commission approves the concept of zone pricing, the LECs will then be required to submit "zone pricing" proposals which the staff will evaluate and bring back to the Commission for consideration. The alternative recommendation is that the Commission not allow the LECs additional pricing flexibility at this time.

Another important issue in this proceeding, which was also an issue at the federal level and is currently under appeal, is whether mandating physical collocation raises federal or state constitutional questions about the taking or confiscation of LEC property. Staff recommends that mandating physical collocation does not represent a constitutional taking of LEC property.

In order to implement expanded interconnection, staff recommends that only Tier 1 LECs be required to file tariffs necessary for the provisioning of intrastate expanded interconnection. Staff recommends that these tariffs, at a minimum, mirror the tariffs filed at the interstate level for expanded interconnection. Generally, the tariffs should include: 1) the cross-connect element; 2) charges for central office floor space; 3) labor and material for initial preparation of space for physical interconnection; 4) labor and materials for installation, repair, and maintenance of equipment dedicated to virtual collocators; and 5) charges for power, environmental conditioning, riser and conduit space. Further, staff recommends that the Commission require non-Tier 1 LECs that receive a bona fide request for interconnection to try and negotiate an agreement to provide expanded interconnection. If the parties are unable to reach an agreement, then the Commission should review such requests on a case-by-case basis. This position is different from the policy adopted by the FCC, where they simply determined that non-Tier 1 LECs should not be required to provide expanded interconnection.

Additionally, staff has recommended that the Commission approve the allocation of floor space for physical collocation on a first come, first serve basis, permit special access and private line customers to terminate most existing contracts with minimal liability (fresh look), extend expanded interconnection to the DS0 level, and allow expanded interconnection of non-fiber optic technology.

Finally, with respect to ICI's Petition, staff recommends that the Commission treat ICI no differently then any other AAV. Staff recommends that the Commission approve ICI's request for expanded interconnection only if the Commission determines

expanded interconnection for all interconnectors is in the public interest.

CASE BACKGROUND

On October 16, 1992, Intermedia Communications of Florida, Inc. (ICI), a certificated Alternative Access Vendor who provides access services throughout the State of Florida, filed a Petition before the FPSC. ICI's Petition specifically requests the Commission to issue an order mandating that local exchange carriers (LECs) file tariff revisions necessary to allow Alternative Access Vendors (AAVs) to provide authorized intrastate services through physical collocation arrangements that will be established within LEC central offices.

Through its Petition, ICI seeks that LECs be mandated to establish tariff rates, terms and conditions necessary to permit certificated AAVs to use these physically collocated facilities to provide intrastate special access and private line services authorized in the AAV certificates. It is ICI's position that such a mandate would be consistent with established Commission policies and would yield substantial and immediate benefits to the public.

By Order No. 24877, issued August 2, 1991, the Florida Public Service Commission (FPSC), has already determined that competition in the interexchange and intraexchange private line and special access markets by AAVs is in the public interest. The purpose of this docket is to determine whether the Commission should take additional steps to introduce a greater level of competition in these markets.

Currently, the degree of competition and the ability to encourage competition in these markets by the Commission is constrained by the Florida Statutes. By Order No. 24877, the Commission found that the Section 364.337, Florida Statutes limits the Commission's authority to permit AAVs to provide private line services, both intraexchange and interexchange, only between affiliated entities. Further, the Commission found that the limitation between affiliated entities extends to any part of a private line (point-to-point) service in which an IXC provides a part. An AAV may provide special access which connects an IXC switch and have it terminate to an end user. However, if an AAV provides special access which is part of an end to end dedicated service, the service may only be provided between an end user and its affiliates. Regardless of the Commission's decision in this docket, competition will be limited unless the Florida Legislature removes the affiliated entity restrictions in Section 364.337.

ICI's Petition was initiated in response to the Federal Communications Commission's (FCC) recent decision in Docket No. 91-141 regarding expanded interconnection with LEC facilities. Docket 91-141 was initiated following a Petition filed on November 14, 1989 by Metropolitan Fiber Systems, Inc. (MFS) which sought to have the FCC establish rules under section 201(a) of the Communications Act governing "the physical interconnection of facilities for competitive carriers providing local access services" in the interexchange market.

Through its Petition, MFS requested that the FCC mandate expanded interconnection to the Bell Operating Companies' (BOCs) networks through physical or virtual collocation. Expanded interconnection, under a physical or virtual collocation arrangement, enables an AAV to interconnect its network with the LEC's network, thus providing an AAV the opportunity to provide service to any customer located on the ubiquitous LEC network without extending its own network.

Over the past several years the FCC has embarked on a more active philosophy to promote competition in all sectors of the telecommunications marketplace. The FCC viewed MFS's Petition as an opportunity to remove barriers that currently impede development of greater competition in the provision of interstate access transmission facilities. It is the FCC's belief that removing these barriers will bring substantial benefits to the interstate telecommunications market.

On October 19, 1992, the FCC released its Report and Order and Further Notice of Proposed Rulemaking in Docket 91-141. In its Order, the FCC states that it believes increased competition through expanded interconnection for special access services will producer similar benefits to those that have been achieved from competition in the customer premises equipment (CPE) market and interexchange (IXC) market for residential and business customers.

Further, the FCC concluded that growth in competition through expanded interconnection should: 1) increase LEC incentives for efficiency and encourage LECs to deploy new technologies enabling new service offerings; 2) make LECs more responsive to customer needs; 3) expand customer choice, especially for those customers who value redundancy and route diversity; and 4) increase competition which will tend to decrease prices for services provided by both LECs and alternatives.

In it's Order, the FCC mandated that all Tier 1 LECs (those with revenues of over $100 million annually) offer expanded interconnection through physical collocation arrangements to all interested parties in most cases. This requirement allows competitive access providers (CAPs - Florida refers to CAPs as AAVs) and high volume users to terminate their own special access transmission facilities at the LEC central offices. Although LECs are mandated to provide physical collocation to all interconnectors that request it, LECs and interconnectors are free to negotiate virtual collocation arrangements if both parties prefer such an arrangement over physical collocation.

Further, the FCC determined that waivers to the physical collocation mandate would be granted only in two circumstances: 1) if a LEC demonstrates that a particular central office (CO) lacks space to provide physical collocation; or 2) if a state legislature or regulatory agency (public utility commission) adopts a formal policy in favor of intrastate virtual collocation. As to the second circumstance, the FCC determined that waivers would be granted to states that had adopted an intrastate policy of virtual collocation prior to February 16, 1993.

On February 2, 1993, the FPSC filed a Petition to the FCC requesting an extension of time from February 16, 1993 to December 31, 1993. Because of Florida's procedural rules, the FPSC argued that the February 16, 1993 deadline was unrealistic and unwarranted. Several other states and the National Association of Regulatory Commissioners (NARUC) also filed petitions for extension of time. On June 8, 1993, the FCC released its Order denying requests for extension of time. As a result, those Tier 1 LECs that operate within a state that had not adopted a formal virtual collocation policy by February 16, 1993 were required to file interstate tariffs offering physical collocation. However, some LECs in Florida were granted relief from the physical collocation requirement in some COs where they demonstrated to the FCC that the COs lack adequate floor space.

In a related matter, GTE, BellSouth, United States Telephone Association and other BOCs filed a Joint Petition for Stay of the FCC Order before the United States Court of Appeals for the District of Columbia Circuit. In the Joint Petition for Stay, they argued that the FCC's mandate for physical collocation on LECs constitutes a taking of property and that the FCC had failed to justify its reversal of previous policy decisions on physical collocation. This Joint Petition is still under appeal. However, the District Court of Columbia did not grant the

Petition to stay the FCC's Order. As a result, the interstate tariffs requiring physical collocation filed by Tier 1 LECs went into effect on June 16, 1993, as ordered by the FCC. Although these interstate tariffs are in effect, the FCC initiated a further proceeding (Docket No. 93-162, Local Exchanges Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access), to investigate such issues as rate levels, rate structure, space size, space warehousing, and other related interconnection issues.

Under physical collocation arrangements, the FCC ordered LECs to provide space within their COs for interconnecting parties to collocate their own terminating equipment. In addition, the LECs were ordered to tariff all terms and conditions for expanded interconnection arrangements. The LEC's are required to tariff physical collocation under uniform terms and conditions in the top 10% of the COs in a given study area, and in COs where there has been a request for collocation by an interconnector. LECs were required to tariff such items as floor space, environmental conditioning, power, conduit and riser space for interconnectors' cable to enter the building, and other related items. Further, LECs were required to allow interconnectors' personnel to enter COs to install, maintain and repair collocated transmission equipment.

In order to further stimulate competition through expanded interconnection, the FCC also granted LECs additional pricing flexibility for special access services. The FCC concluded that as the provision of special access becomes more competitive, market pressures should force prices toward their economic cost. The FCC noted that under price caps, LECs do have a certain degree of pricing flexibility. However, the Part 69 rules require rate averaging at the study area level which can prohibit the LECs from effectively competing with its competitors. Because LEC competitors generally target areas where the economic costs are below the LEC's average costs, such as high density areas, the FCC determined it would be appropriate to allow LECs greater pricing flexibility to reflect density-related cost differences. The FCC believes that too many constraints on LEC access pricing will limit the benefits of competition and provide false economic signals to new entrants.

Another significant decision in Docket 91-141 was the FCC decision on the concept of a "fresh look" approach. The FCC ordered that customers with LEC special access services with terms equal to or greater than three years, entered into on or before September 17, 1992, be permitted to switch to competitive

alternatives during the 90 day period after expanded interconnection arrangements are available in a given CO. If an end user chooses to switch to a competitor, termination charges to the LEC contract would be limited to the additional charges that the customer would have paid for a contract covering the term actually used, plus the prime rate of interest.

Through its Petition, ICI seeks authority for expanded interconnection at the state level. ICI contends in its Petition that the inability to provide intrastate private line and special access services over existing collocated facilities will require AAVs to maintain different facilities for the provision of intrastate and interstate services. Such a requirement will result in unnecessary construction and maintenance expenses and limit the ability of AAVs to compete with LECs. Moreover, it will deny AAVs the network efficiencies that the LECs currently enjoy, such as the ability to route interstate and intrastate services over the same facilities in order to optimize network efficiency.

Although ICI specifically sought authority to provide expanded interconnection for special access and private line services, staff has initiated a second phase in this docket to address whether AAVs should be granted authority to provide expanded interconnection for switched access. Phase II is scheduled for hearing on August 22-26, 1994.

DISCUSSION OF ISSUES

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

RECOMMENDATION: Yes. Staff recommends that the Commission find expanded interconnection for special access and private line services to be in the public interest.

POSITIONS OF PARTIES

INTERMEDIA: Yes. Expanded interconnection will promote 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 customers.

ALLTEL: No position.

ATT-C: Yes. Benefits to be derived from expanded interconnection will include more rapid deployment of new technology, system redundancy, increased protection against disastrous outages, increased service innovation, greater customer choice, and price competition that will reduce the cost of telecommunications services to all customers.

CENTEL: Centel adopts the position of United on this issue.

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

FIXCA: Under appropriate conditions, addressing unique problems such as AT&T's collocated arrangements inherited at divestiture and tariffing requirements, expanded interconnection for special access and private line service is in the public interest.

GTEFL: Expanded interconnection can be in the public interest if it is implemented along with a policy allowing negotiated collocation arrangements and increased pricing flexibility for services for which expanded interconnection will be available.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: Indiantown Telephone System, Inc. (Indiantown), Northeast Florida Telephone Company (Northeast),

Quincy Telephone Company (Quincy) and Southland Telephone Company (Southland) respond only as to their own situations and believe that expanded interconnection for special access would not be in the public interest unless those matters peculiar to each of these small companies, as providers of service to rural subscribers, is taken into consideration and universal service is preserved.

IAC: No position.

MCI: Yes, provided such expanded interconnection is implemented in a way that does not give a special advantage to any one carrier.

SOUTHERN BELL: Expanded interconnection for special access and private line will serve the public interest if it is ordered by this Commission in a way that avoids or minimizes harm to ratepayers through diminished contribution, which will result if LECs are not allowed to be price competitive as to these services.

SPRINT: Yes. Expanded interconnection encourages competitive entry in the provisioning of access services which is, at present, almost exclusively being provided by LECs. The long term benefits of lower prices, product innovation, higher quality service and network diversity would be realized by both the end-user and the telecommunications industry.

TELEPORT: Yes. Central office interconnection will provide significant benefits to consumers in Florida.

TIME WARNER: Yes.

UNITED/CENTEL: Yes. Although competition in the provisioning of special access and private line services will benefit consumers in the long-run with product innovation, higher quality service, network diversity and lower prices, consumers will be disadvantaged by such competition unless the Company is granted pricing flexibility.

OPC: Yes.

STAFF ANALYSIS: By Order No. 24877 (Docket No. 890183-TL), issued August 2, 1991, the Florida Public Service Commission (FPSC) found it in the public interest to certificate AAVs to provide intraexchange and interexchange private line services and special access services to affiliated entities. Through

competition, the Commission found that there are many benefits that AAVs can bring to the private line and special access markets. The benefits include, but are not limited to: 1) introduction of new services and technologies by both LECs and AAVs; 2) AAVs' provision of service to niche markets that the LECs either cannot or do not offer; 3) AAVs offering self healing networks, thereby providing customers with network redundancy; 4) price competition; and 5) increased customer choice. (FPSC Order No. 24877, p. 9-10)

The purpose of this issue is not to determine if AAVs in Florida are in the public interest; that issue has already been determined. This issue focuses on whether the Commission should take steps that will bring more competition to the private line and special access markets. Expanded interconnection with the LEC central office (CO) has been viewed by many as a significant and historic step in dismantling the local exchange monopoly. Not since the divestiture of AT&T have regulators been faced with issues of such magnitude that will significantly alter the regulatory model of telecommunications. Through this docket, ICI and other providers of access services seek authority to interconnect with the LEC CO to provide special access and private line services. It is important that this Commission recognize that the actions taken in this phase of the docket are merely the first steps to introducing competition into the local loop. Staff believes that AT&T's witness Guedel properly characterizes the effect of expanded interconnection with respect to competition. Witness Guedel states that:

> The adoption of expanded interconnection through this docket will represent only an initial step in the efforts to create possibilities for real competition to develop in the market for local exchange access service. First this immediate proceeding (phase I) addresses only special access services - a very small part of the local exchange monopoly. The docket does not address the local loop and the end office switches - the real core of the local bottleneck monopoly. Second, it will take some time for competitors to respond to the new opportunities offered through expanded interconnection, to develop and deploy competitive networks, particularly on a statewide basis. Interconnection is a necessary initial step to begin the

> introduction of competition but it alone will not guarantee the development of competition within the state and it will not directly alter the existing local exchange monopoly held by the LECs. (TR 195)

Although Phase I of this proceeding is limited to interconnection for special access and private line, Phase II will address interconnection for switched access. The Commission has scheduled hearings for Phase II in August 1994.

Benefits of Competition in the Telecommunications Industry

The telecommunications market structures are changing due to new market participants, the rapid advancement of technological change, and change in customer demand for new products and services. These changes are significantly altering the regulatory paradigm of telecommunications and bringing significant benefits to users of telecommunications services. These benefits include but are not limited to: 1) expanded customer choice; 2) price competition; 3) private investment in the telecommunications infrastructure; 4) new services and technologies; 5) diversification; 6) higher service and quality; and 7) improved efficiency by both the incumbent and new entrants. (Report and Order and Notice of Proposed Rulemaking, Released October 19, 1992, para 13)

The FPSC has long endorsed the concept of competition in the telecommunications industry. (Order No. 14132, Order No. 23540, Order No. 24877) AT&T's witness Guedel testified that this Commission was one of the first state commissions in the country to authorize limited intraLATA interEAEA toll competition shortly after the divestiture of AT&T. By Order No. 23540, the Commission expanded facilities based competition to include intraLATA intraEAEA service, thus bringing customers the benefits of statewide interexchange toll competition. (Guedel TR 196) In recognition of the benefits from competition, the Commission has sought to foster a competitive marketplace in the private line and special access markets, intraLATA and interLATA toll markets, pay telephone service, and other market segments where the Commission has determined that competition will benefit the public good.

Expanded Interconnection in the Public Interest

AAVs possess the technical capability to provide a wide range of voice, data and video services. Typically, these

services are high-capacity digital services provided over dedicated access lines such as DS1 and DS3 facilities. For those customers that do not require the full bandwidth of a DS1 facility, AAVs are technically capable of providing DS0 and fractional DS1 services. (Depending on the type of service applications required, different types of dedicated access lines are available. A DS0 is the equivalent of a one voice grade circuit, DS1 is the equivalent of 24 DS0s or 24 voice grade circuits and a DS3 is the equivalent of 28 DS1s or 672 DS0s.) AAVs, such as ICI, provide three general types of telecommunication links: 1) point-to-point private line services connecting one customer's premises to another; 2) links between a customer's premises and an IXC's point-of-presence (POP) to provide the originating or terminating end of an interstate or intrastate, interexchange or intraexchange service; and 3) links between IXC POPs, to hand off traffic from one IXC to another, or to offer a single IXC the ability to aggregate or reroute its traffic without expanding its network. (Canis TR 20)

In Florida, the telecommunication links provided for private line service are limited, by statute, to connections between affiliated entities. (Order No. 24877, p. 7) For example, in Florida an AAV may provide point-to-point private line service between one IBM location and another IBM location. However, an AAV would not be able to provide point-to-point private line service from IBM to Barnett Bank.

Typically, AAV networks are fiber-based facilities constructed in a loop or ring configuration around large metropolitan areas. Under the current regulatory framework, AAVs are capable of providing service only to those customers accessible over the AAV's own network. (Canis Tr 22) What the Commission is being asked to decide is whether allowing AAVs expanded interconnection with the LEC network is in the public interest. Under an expanded interconnection arrangement, an AAV would have the ability to access customers that it would not typically be able to serve unless the AAV expanded its own network. (Canis TR 22) Through interconnection with the LEC network, an AAV would be able to provide service to any customer that chooses to purchase AAV services regardless of whether the AAV had network facilities near the customer's location. Without interconnection, unless an AAV determined that it would be economical to expand its network to customers outside of its basic network, an end user would only be able to purchase services through the serving LEC. (Canis TR 22)

The issue of whether expanded interconnection is in the public interest for interstate special access has already been addressed by the FCC in Docket 91-141. On October 19, 1992, the FCC released its Report and Order, whereby the FCC concluded that expanded interconnection was in the public interest. The FCC found that increased competition for interstate access would bring about significant benefits to the telecommunications marketplace. The FCC concluded that competition for special access will produce benefits similar to those of the IXC market and CPE markets over the past decade. Further, the FCC concluded that greater competition should: 1) increase LEC incentives for efficiency and introduction of new technologies; 2) encourage LECs to be more responsive to customer needs; 3) increase customer choice; and 4) increase price competition between LECs and alternative providers.

Position of Parties

In principle, all of the parties to this docket agree that expanded interconnection for intrastate special access and private line service is in the public interest. (Canis TR 22-25, Guedel TR 194, Poag TR 481-482, Kouroupas TR 243-244, Denton TR 390, Beauvais TR 330-331, Rock TR 442-443) The parties believe adoption of an expanded interconnection policy for special access and private line will foster competition within the local exchange areas, thereby benefiting consumers of special access and private line services. AT&T's witness Guedel testified that expanded interconnection will benefit consumers in much the same way that competition in other areas of telecommunications, such as CPE and IXC competition, have benefitted consumers over the years. (TR 194) The benefits from expanded interconnection identified by the parties in this docket are consistent with the benefits identified at the federal level and by other state utility commissions that have addressed this issue.

Specifically, ICI's witness Canis testified that the FCC and other state utility commissions that have addressed expanded interconnection have identified significant benefits that will accrue through competition for access services. Witness Canis stated that these benefits include: 1) more rapid deployment of new technology; 2) system redundancy and increased protection against disastrous outages; 3) increased service innovation; 4) greater customer choice; and 5) price competition that will reduce the cost of telecommunication services to all customers. (TR 22)

Further, witness Canis testified that ICI has already demonstrated that competition brings substantial public benefits. He noted the benefits that ICI has brought to the Florida marketplace, such as a redundant fiber ring network architecture, that only recently has been copied by LECs, plus new services, lower prices, and higher quality service. (TR 23) Specifically, witness Canis testified that as a result of competition from AAVs in the interstate market, some Florida LECs have reduced their DS-1 rates by as much as 50% and in some cases the rates have been reduced by as much as 80% over the last five years. (TR 102)

Teleport's witness Kouroupas supported the position that expanded interconnection for special access and private line services is in the public interest. Witness Kouroupas testified that all subscribers of telecommunication services will benefit from competition as LECs upgrade and improve their transmission facilities in order to prepare for competition from AAVs. This will benefit subscribers through improved service, better quality service and lower costs for the basic services transmitted over these upgraded networks. Additionally, he contends that competition will encourage the LECs to reduce their costs and improve their efficiency. (TR 243-244)

Although the parties agree in principle that expanded interconnection is in the public interest, the LEC witnesses conditioned their positions on whether the LECs were granted sufficient flexibility to compete with AAVs. (Denton TR 390, Beauvais TR 330-331, Poag TR 481) GTEFL asserts that the benefits of competition will never come about if some market participants remain handicapped by unduly restrictive regulations while others are free of such competitive limitations. Southern Bell, GTEFL and United/Centel believe that if LECs are denied the ability to effectively respond to competitive threats then expanded interconnection is not in the public interest.

For example, Southern Bell's witness Denton testified that special access and private line provide contribution to residential service rates. (Denton TR 390) Southern Bell believes that increased competition in the special access and private line markets place these contribution levels at risk. In order to mitigate the loss of this contribution, it is essential that LECs be granted pricing flexibility in order to respond to increased competition. If LECs are not able to respond to competition then there is the potential for harm to the residential end user. (Denton TR 390)

In response to witness Denton's claim that special access and private line provide contribution to residential rates, Teleport argued in its brief that special access and private line do not provide contribution to residential rates. Teleport claims that the information disclosed in a recent report by the United States Telephone Association (USTA) reveals that the LECs are providing private line services substantially below cost and therefore these services could not possibly provide any support for residential rates.

Southern Bell witness Denton testified to two other potential effects if LECs are not permitted pricing flexibility: 1) the potential for inefficient competitors to enter the market, and 2) the potential for users of special access and private line to be denied even lower prices for these services. (TR 424-425) Witness Denton testified that the pricing philosophy of AAVs is to price below LECs, 5% to 15%. It is his position that if LEC prices are kept at a higher level and the AAV's philosophy is to price relative to those rates, then the Commission has denied the users of AAV services the chance for even lower prices. If LECs are able to reduce their rates toward the economic cost of providing special access and private line services, then AAVs will be forced to reduce their rates. (Denton TR 424-425)

Although United does not oppose expanded interconnection, the focus of United's concerns in this docket centered primarily on two issues: 1) the cross-elasticity of special access and switched access; and 2) the ability for LECs to compete effectively with AAVs. United believes that if the Commission is going to approve expanded interconnection, the Commission must address the underlying principles of access pricing, especially the high price for switched access services. (Poag Tr 486-487) If switched access prices are not reduced, the potential for service bypass or facilities bypass is increased.[1] (Poag TR 487)

United's witness Poag testified that expanded interconnection will intensify competition for special access, thus driving the prices for these services towards their economic costs. Because of the elasticity between special access and switched access, as these rates are reduced relative to switched

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[1] Service bypass refers to a customer replacing LEC switched access services with cheaper special access services. Facilities bypass occurs when a customer replaces LEC facilities with a competitor's facilities.

access, high-volume users of switched access such as IXCs will migrate to special access. The effect of such action will be the loss of substantial contribution provided by switched access services to common costs and other public policy objectives. (Poag TR 486-487)

United argues that introducing competition into areas that have historically been priced to provide contributions that support below-cost basic residential service creates a significant dilemma. United's witness Poag testified that:

> ... the true economic benefits to competition will not be realized if pricing supports are not removed and all competitors are not allowed to price based on relative economic costs. Without pricing flexibility, the Commission imposed artificially high access rates serve as a pricing umbrella for inefficient producers to enter the market and be profitable. (Poag TR 483)

At a minimum, witness Poag testified that the Commission must reduce intrastate switched access rates to the interstate level in areas where the volumes are sufficient to attract competition and allow the LECs pricing flexibility for special access and private line. (TR 494) Witness Poag noted in his testimony that the Commission intends to address the issue of switched access rates and expanded interconnection in Phase II of this proceeding. However, he argues that the impacts of expanded interconnection for special access and private line cannot be ignored in Phase I. He asserts that granting LECs pricing flexibility for special access and private line will at least allow United to remain a viable player. (TR 487) Witness Poag testified that expanded interconnection makes the Company more vulnerable to bypass than ever before, especially if switched access rates are not reduced and if United is not granted pricing flexibility to meet the bypass competitors. (TR 487)

The witnesses for the LECs acknowledged that expanded interconnection will facilitate competition in the private line and special access markets, thus bringing potential benefits to end users. However, the LECs do oppose expanded interconnection if the LECs are not free to compete with AAVs. Staff believes that the position of the LECs can best be characterized by the statement of GTEFL's witness Beauvais when he stated:

> As an economist, I sincerely believe in the

> benefits derivable from the competitive provision of virtually any good or service, telecommunications or otherwise. However, the extent of the benefits passed to the public depends to a large extent on the pricing practices of the companies competing with each other.
>
> In order to allow the maximum benefit possible, all parties should be allowed to compete on an equal basis. That would immediately imply that LECs should be allowed the same pricing flexibility as AAVs already have. (TR 334)

In addition to the issue of pricing flexibility, GTEFL argues that another intricate component to the public interest consideration is the issue of interconnection. GTEFL believes that mandating a physical collocation policy is contrary to the public interest goals of collocation. By permitting a LEC-choice option for interconnection, GTEFL believes that the Commission can preserve the LEC's ability to meet long-term state needs and social objectives and protect the integrity and reliability of the public switched network. GTEFL's position on a LEC-choice option for interconnection is addressed in detail in Issue 6. Staff does not believe that the Commission needs to make a determination whether a LEC-choice option is in the public interest in order to determine if expanded interconnection is in the public interest. Based on the evidence in this proceeding, the Commission will decide on whether to mandate physical collocation or allow the LEC to determine whether to provide interconnection through a physical or virtual arrangement.

Staff Conclusions

Staff believes that ICI properly sets forth the framework for determining whether expanded interconnection for special access and private line services is in the public interest. In its brief, ICI states that:

> Determining the public interest question in this proceeding is essentially a balancing test: will the good to be gained (or the harm to be avoided) outweigh the harm caused (or the good lost) through this course of action? Applying the balancing test in light of current Chapter 364 of the Florida Statutes,

the FCC's decision regarding interconnection, and the record in this case,...

Staff believes that the difficulty in balancing these interests is that competition will have a myriad of effects that we may not necessarily be able to predict in advance. However, the Commission should recognize that by maintaining the status quo, we will not be able to predict what that effect will be either. Staff believes that the evidence presented in this docket supports expanding competitive opportunities in the private line and special access markets. Staff believes that the adoption of a competitive regulatory model for private line and special access services, will benefit Florida's long term telecommunications infrastructure and the users of telecommunications services. (EXH. 3 p. 18-19, EXH. 7 p. 13, EXH. 18 p. 38)

Staff believes the public interest determination for expanded interconnection requires a balancing of the benefits from competition and the potentially adverse effects from such action. Staff believes that there are three key areas that the Commission must consider when determining if expanded interconnection is in the public interest. These three areas are:

1) Will expanding competitive opportunities for special access and private line benefit end users?

Yes. The Florida Commission has long supported the concept of a competitive telecommunications industry where doing so will benefit the public. With respect to private line and special access services, the Commission previously determined that competition from AAVs will benefit end users through expanded customer choice, price competition, new services and technologies, and diversification and network redundancy. However, today competition for these services are limited. Witness Canis testified that the factor that most significantly limits AAV growth is the limited reach to their network -- currently, AAVs serve a niche market of customers physically connected to their networks. (TR 22) Staff agrees with witness Canis that allowing interconnection with the LEC network will expand the reach of an AAVs network, thus increasing the prospect of a more competitive special access and private line market. By interconnecting with the LEC network, an AAV will now have access to any customer located on the LECs network. (TR 22)

Staff believes that adopting an expanded interconnection

policy will foster a more competitive private line and special access marketplace. The evidence in this proceeding supports the concept that competition in these markets can bring substantial benefits to the end users of private line and special access services. Staff believes that the benefits identified in this proceeding -- increased customer choice, introduction of new services and technologies, price competition, diversification and network redundancy, private investment in the Florida infrastructure, increased service and quality, greater responsiveness to end user needs, and improved efficiency -- will accrue through expanded interconnection for special access and private line. (Canis TR 22-25, Guedel TR 194, Poag TR 481-482, Kouroupas TR 243-244, Denton TR 390, Beauvais TR 330-331, Rock TR 442-443) These benefits are similar to the benefits previously identified by the Commission in Docket No. 890183-TL.

2) Will the LECs or end users of LEC special access and private line services be adversely affected by expanded interconnection if the Commission does not grant the LECs regulatory flexibility?

No. Staff does not believe that in order for the Commission to find expanded interconnection to be in the public interest that the Commission must grant the LECs pricing flexibility and allow the LECs the option of offering physical or virtual collocation. Although staff does not take a position in this issue on pricing flexibility or physical vs. virtual collocation (see Issues 6 and 15), staff does not believe that the LECs will be adversely affected by expanded interconnection if the Commission does not adopted the LECs position.

Witnesses for the LECs contend that in order for the true benefits of competition to exist, all providers of special access and private line services must be given the same opportunities to compete with each other. (Beauvais TR 334, Poag TR 481) Thus, they argue that in order for LECs to effectively compete with AAVs the LECs must have sufficient pricing flexibility. The witnesses for the IXCs also supported the position that in order to have effective competition, LECs should be granted pricing flexibility. (Rock TR 449-452, Guedel TR 227)

Not surprisingly, witnesses for the AAVs contend that LECs have market dominance in the special access and private line markets and that there is no need for the Commission to grant LECs additional pricing flexibility. Witnesses Canis and Kouroupas argued that the LECs already have sufficient pricing flexibility through contract service arrangements. (Canis TR 53, Kouroupas TR 263-265)

Staff agrees with the witnesses for the LECs that granting the LECs some ability to compete for end user customers on the basis of price competition will extend the benefits of competition. However, staff does not believe that the Commission must grant the LECs additional flexibility today in order to find expanded interconnection in the public interest. As witness Kouroupas pointed out under cross-examination, the presence of a competitor does not necessarily represent a competitive market. It will take some time for AAVs to market themselves and educate consumers that alternatives to the LEC exist. (Kouroupas TR 264) Staff believes that the Commission can find expanded interconnection to be in the public interest but delay granting any flexibility to the LEC. Because the LECs are incumbents in the private line and special access markets, the Commission may choose to allow AAVs time to establish themselves in the market before granting LECs pricing flexibility. At a later date, the Commission may determine that sufficient competition exists in the private line and special access markets and that restricting the LECs is no longer appropriate.

If the Commission decides not to grant LECs immediate pricing flexibility, staff believes that any adverse effects on end users will be short term. Staff believes that the long term benefits from allowing competition to develop will offset any short term adverse effects on end users.

3) Will residential users be adversely affected by competition for special access and private line?

Witnesses for the LECs proffered testimony that competition and a competitive marketplace will bring benefits to the users of competitive services such as private line and special access. However, as regulators introduce competition into areas that have historically provided contribution to residential service rates there is the potential for harm to the end user. Southern Bell's witness Denton and United's witness Poag cited the possibility of contribution losses from private line and special access services, and contribution losses from switched access as large volume users migrate from switched to special access. (Denton TR 390, Poag TR 481, 486-487)

The Commission should note that contrary to Teleport's claim that a recent USTA report shows that private line and special access is provided below cost, the evidence in this proceeding does not support Teleport's claim. First, the report cited by Teleport was not introduced as evidence; therefore their argument should be disregarded. Second, the fact that an industry report

provides statistics showing that a service is provided below cost does not necessarily represent the marketplace in Florida. Staff agrees that for some time, private line and special access services were provided below cost. However, the Commission has taken steps to correct this situation. Through Docket 890505-TL, the Commission restructured the rates for private line services, so that they are priced above cost. This rate restructuring has been completed for Southern Bell, United and Centel. GTEFL has completed the first two phases of its restructuring and will complete its last phase by December 1, 1994. Thus, in most areas, private line service in Florida is provided above cost.

Staff agrees with witnesses Denton and Poag that as competition for these services increase additional LEC revenues are placed at risk. When any provider of a good or service controls nearly 100% of a market, it is reasonable to expect that as competition increases that provider will, in all likelihood, lose market share. However, staff does not believe that the evidence in this proceeding supports a finding that expanded interconnection will have any substantial effect on residential rates. During cross-examination regarding the effect expanded interconnection for special access and private line services will have on residential rates, witness Beauvais stated that:

> I believe in the short-run, if we define special access and private lines, the way we are today, there's probably very little impact on residential customer's bill one way or the other from the provision of expanded interconnection. So Mom would be okay in the short-run.
>
> As we move to switched -- on to switch, however, the contribution from switched access is far greater than it is special, and that's when you start generating potentially all kinds of revenue impacts. (TR 356-357)

During cross-examination witness Poag also agreed that approving an intrastate expanded interconnection policy will have little impact on residential rates. (TR 566-567) Witness Poag noted that United has only $5 million in intrastate special access revenues, and the fact that the FCC approved expanded interconnection will cause migration from switched access to special access regardless of the actions taken by this Commission. (TR 566-567)

Based on the evidence in this proceeding staff does not believe that expanded interconnection will have a substantial impact, if any, on residential rates. Staff does agree that LECs could potentially lose revenues from competition for special access and private line, and that end users may migrate from switched to special access. However, the amount of LEC revenues at risk are relatively small if the Commission adopts an expanded interconnection policy for special access and private line. For example, United's special access revenues account for 1.5% of total access revenues (Poag Tr 490) and 0.75% of intrastate revenues. (EXH 17, p 57) Therefore, in a worst case scenario if United was to lose all of its special access revenues it would have little effect on the company's overall earnings.

Staff agrees with the LEC witnesses that expanded interconnection for switched access will have significant effects on LEC revenues and may place pressure on local rates. However, staff does not believe that the Commission's decision in Phase I of this proceeding compels the Commission to adopt an expanded interconnection policy for switched access which the Commission will investigate in Phase II.

In conclusion, staff recommends that the Commission find expanded interconnection for special access and private line to be in the public interest. Staff believes that the benefits identified in this proceeding -- increased customer choice, introduction of new services and technologies, price competition, diversification and network redundancy, private investment in the Florida infrastructure, increased service and quality, and greater responsiveness to end user needs -- will accrue through expanded interconnection regardless of the actions taken by the Commission with respect to LEC pricing flexibility or the interconnection architecture.

Staff believes that a finding in favor of expanded interconnection is consistent with the Commission's decisions in other dockets to encourage a more competitive telecommunications structure and with the Florida Statutes. Under Section 364.01(3)(c) and (e), Florida Statutes, the Commission is encouraged to exercise its exclusive jurisdiction in order to:

> (c) Encourage cost-effective technological innovation and competition in the telecommunications industry if doing so will benefit the public by making modern and adequate telecommunication services available at reasonable prices; and

...

(e) Recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of competitive telecommunication services, where appropriate, if doing so does not reduce the availability of adequate basic local exchange service to all citizens of the state at reasonable and affordable prices, if competitive telecommunication services are not subsidized by monopoly telecommunication services, and if all monopoly services are available to competitors on a nondiscriminatory basis.

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? **[MCCABE]**

Approved stipulation:

The FCC's Order on Expanded Interconnection does not restrict the FPSC's ability to impose forms and conditions of expanded interconnection that are different from those imposed by the FCC's order. Expanded interconnection for intrastate special access/private line falls under the FPSC's jurisdiction and the Commission is not bound by any interstate policy.

STAFF ANALYSIS: This stipulation was approved at the September 13, 1993 hearing. (TR 10-11) Therefore, this issue is resolved.

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

Approved stipulation:

By agreement of the parties, Issue 3 is deleted from further consideration in this proceeding.

STAFF ANALYSIS: This stipulation was approved at the September 13, 1993 hearing. (TR 10-11) Therefore, this issue is resolved.

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

RECOMMENDATION: Yes. The Commission has the authority, pursuant to Chapter 364, Florida Statutes, to mandate expanded interconnection for private line and special access services.

POSITIONS OF PARTIES:

INTERMEDIA: Yes.

ALLTEL: No position.

AT&T: Yes. Requiring expanded interconnection, under appropriate circumstances, is within the Commission's statutory discretion.

CENTEL: Centel adopts the position of United on this issue.

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

FIXCA/IAC: No position.

GTEFL: Chapter 364 does not appear to forbid the Commission from requiring expanded interconnection for special access services.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: Yes.

MCI: Yes.

SOUTHERN BELL: There is nothing in Chapter 364, Florida Statutes that would prohibit this Commission from ordering expanded interconnection. Expanded interconnection, however, cannot be used as a means to do something that would otherwise be prohibited by Chapter 364.

SPRINT: No position.

TELEPORT: Yes.

TIME WARNER: Yes.

UNITED: Chapter 364, Florida Statutes, appears to allow the FPSC to require expanded interconnection. However, Section 364.335, Florida Statutes limits the Commission as to the types of

services for which expanded interconnection can be required.

OPC: Yes.

STAFF ANALYSIS: The parties agree that nothing in Chapter 364, Florida Statutes prohibits the Commission from mandating expanded interconnection for private line and special access services if it is found to be in the public interest. Southern Bell asserts that allowing "ratcheting," which includes switched access services, would violate Section 364.337(3)(a), Florida Statutes which enumerates the services which may be provided by an AAV. Staff observes that approval of ratcheting has not been recommended and is more appropriately the subject of Phase II of this proceeding.

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

RECOMMENDATION: No. a physical collocation mandate does not violate the federal or state constitution.

INTERMEDIA: No. With respect to the federal taking issue, the LEC is compensated for collocation space, even if "occupation" is ruled to be a "taking" in this context. At the state level, mandated physical collocation is "occupation" by consent because of the LEC's status as the certificated monopoly provider under Chapter 364.

ALLTEL: No position.

AT&T: No.

CENTEL: Centel adopts the position of United on this issue.

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

FIXCA/IAC: No position.

GTEFL: Yes. A physical collocation mandate requires permanent physical intrusions that constitute a "taking" of the LEC's property under both the Florida and United States Constitutions.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: Yes. We believe there is pending litigation.

MCI: No.

SOUTHERN BELL: Southern Bell has appealed the FCC's Order because it believes that a mandate of physical collocation constitutes an unlawful taking of LEC property.

SPRINT: No position.

TELEPORT: No. The key to the fairness of interconnection to all parties is that the interconnectors compensate the LECs for the use of LEC facilities. Therefore, a physical collocation mandate does not constitute a taking.

TIME WARNER: No.

UNITED: Yes. Mandatory physical collocation constitutes a taking of the LEC's property requiring compensation which can only be awarded by a court. Because the FPSC is a legislative agency, it lacks the authority to meet the required constitutional protection.

OPC: No position.

STAFF ANALYSIS: The arguments regarding this issue are wide ranging and staff recounts them at length below. However, staff believes that there are two core arguments to be culled from the filings. The LECs argue that a mandatory physical occupation is a per se taking. Intermedia and Time Warner/FCTA argue that property dedicated for the public purpose which is regulated in the furtherance of that purpose does not constitute a taking so long as the property owner is allowed a fair return on its investment. Staff agrees with Intermedia and Time Warner/FCTA that property dedicated to a public purpose, such as that of a common carrier, is subject to a different standard when, pursuant to statutory authorization, a regulatory body mandates certain uses of that property in the furtherance of its dedicated use. In the instant case, the statutory authorization is provided by Chapter 364, Florida Statutes.[2] The fact that the Commission may determine that effective interconnection, and the adequate provision of telecommunications service, requires that space in the LEC central office be dedicated for such a purpose should not turn statutorily authorized regulation into a taking.

I. Taking

There is disagreement regarding the applicable standards with which to determine whether a taking has occurred. Several parties agree that Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) is applicable. It is relied upon as authority for taking analysis based upon an ad hoc factual inquiry of:

1. The economic impact of the regulation;
2. The extent to which it interferes with investment-

[2] For example, Section 364.16, Florida Statutes (which provides for the Commission to regulate interconnection); Section 364.01, Florida Statutes (which sets forth the general powers of the Commission); Section 364.15, Florida Statutes (which gives the Commission the authority to compel improvements to and changes in any telecommunications facility).

backed expectations; and
3. The character of the governmental action.

Loretto is also relied upon for the proposition that a permanent physical occupation represents a per se taking and that an ad hoc inquiry is only reached in the absence of such a permanent physical occupation. In Loretto, the Court stated:

> We affirm the traditional rule that a permanent physical occupation of property is a taking. In such a case, the property owner entertains a historically rooted expectation of compensation, and the character of the invasion is qualitatively more intrusive than perhaps any other category of property regulation. Id. at 441

Staff believes that an objective reading of Loretto is that if there is a permanent physical occupation that there is a taking. This is the case regardless of the size of the occupation. In Loretto, the permanent occupation was the attachment of wires and a box to the exterior of a building.

In the instant case, the LECs object to the possible mandate of significant central office space to effectuate statutorily authorized interconnection. However, based on Loretto, it appears that even a mandate of virtual collocation, which would require cables and a connection, would be a taking if opposed by the LECs. Such an interpretation would make it impossible for the Commission to regulate telecommunications pursuant to its statutory mandate.

Some argue that compensation will remedy a taking, while others contend that the issue of compensation is separate from a taking analysis and that appropriate compensation for a taking can only be determined by the judiciary. In its text book Response Brief, GTEFL argues that under the Florida Constitution an owner must be compensated at full market value for the property taken. GTEFL concludes that a cost-based mechanism for regulating physical collocation rates (such as that employed by the FCC) is unacceptable under the Florida Constitution.

Staff observes that the Commission lacks the power of eminent domain which is required to take property. Staff also agrees that the authority to determine the appropriate compensation for a taking rests with the judiciary.

However, based on the analysis set forth below, staff believes that Loretto is not the appropriate standard to employ regarding the Commission's statutorily authorized regulation of a LEC's "used and useful" property. Staff observes that in addressing this issue, the FCC reasoned that "[a]ny per se rule, including the Loretto per se rule, is not reasonably applicable to a regulation covering public utility property owned by an interstate common carrier subject to the specific jurisdiction of this agency." (paragraph 233, Report and Order Released October 19, 1992. CC Docket No. 91-141, 92-222)

II. Regulation of Used and Useful Property

In its Response Brief, Time Warner/FCTA observes that Loretto involved neither the taking of a common carrier's property nor government regulation of a common carrier.[3] Time Warner/FCTA finds this distinction to be central to any taking analysis and quotes State ex rel. Railroad Com'rs v. Florida East Coast Ry. Co., 49 So. 43-44, (Fla. 1909) as follows:

> A lawful governmental regulation of the service of common carriers, though it may be a burden, is not a violation of constitutional rights to acquire, possess, and protect property, to due process of law, and to equal protection of the laws, since those who devote their property to the uses of a common carrier do so subject to the right of governmental regulation in the interest of the common welfare. . . . Even where a particular regulation causes a pecuniary loss to the carrier, if it is reasonable with reference to the just demands of the public to be affected by it, and it does not arbitrarily impose an unreasonable burden upon the carrier, the regulation will not be a taking of property, in violation of the Constitution. (Emphasis added by Time Warner/FCTA)

[3] In Loretto, the Court addressed a New York law requiring landlords to allow cable television facilities on their property.

In its Response Brief, Intermedia in essence questions the historically rooted expectation of the LECs regarding their "used and useful" property. Intermedia argues that it has long been established that property which has been dedicated to a public purpose can be regulated and even permanently physically occupied as long as the regulation involves the dedicated public purpose.

Intermedia quotes Munn v. Illinois, 94 U.S. 113, 126 (1876) as follows:

> Property does become clothed with a public interest when used in a manner to make it a public consequence, and affects the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but, so long as he maintains the use, he must submit to the control.

Under Intermedia's analysis, the taking issue is not reached except to the extent that there is inadequate compensation for the use of the property or a mandate to use the property in a manner to which it has not been dedicated. Thus, while Intermedia would not find a taking in the ordering of mandatory physical collocation, it avers that if the Commission ordered a LEC to make space available for a water and wastewater utility there might well be a constitutional taking because the LECs have dedicated their property to providing telecommunications service and not water service.

Under this view, if an owner, which has dedicated used and useful property for a public purpose, decides that regulatory impositions are too great, its options are to challenge the allowed rate of return, or withdraw from the business which is imbued with the public interest. Having withdrawn, the owner can use its property for other purposes.

In its Response Brief, GTEFL asserts that the power to regulate in the public interest does not include the right to take private property. Staff agrees but notes that such analysis presumes that mandatory physical collocation represents a taking. Likewise, GTEFL argues the authority to order connections between

carriers does not include the authority to take property. Again staff agrees, but notes that this is not dispositive of whether a taking would occur with a physical collocation mandate.

GTEFL also asserts that the constitutional protection against unlawful takings extends to private property dedicated to the public use. Again staff agrees. However, staff observes that the cases relied upon for this contention are not cases which involve a regulatory mandate regarding the public purpose for which the property at issue was dedicated. For example, the cases involve: the placement of telegraph lines on railroad rights of way, the authority of a municipality to establish a taxi stand on the driveway of a railroad station, and establishment of the rates which a utility can charge for a cable company to attach to the utility's poles. Staff believes that these cases are akin to Intermedia's hypothetical that if the Commission required a LEC to provide space for a water company there could be a taking. Another case relied upon by GTEFL involves the setting of confiscatory rates for the use of the property at issue. Intermedia concedes that such a circumstance is prohibited.

GTEFL observes that it has been stipulated (Issue 9) that interconnection will not be limited to telecommunications companies. GTEFL argues that Section 364.16, provides authority for mandating interconnection only between telecommunications companies. Thus, GTEFL contends that if the Commission mandates physical collocation on the basis of Section 364.16, an artificial distinction will necessarily be created between telecommunications companies and other functionally equivalent entities who might wish to interconnect. Staff agrees that if it is ordered under the authority of that Statute alone that an artificial distinction could result. However, staff believes that the Commission can require physical collocation of functionally equivalent entities pursuant to its more general statutory powers to regulate telecommunications in the public interest.

While the Commission cannot determine the appropriate compensation for a taking, it certainly has the authority to establish the appropriate rates for the provision of telecommunications service in Florida. Provided the rates are not confiscatory, staff recommends that a physical collocation mandate represents a taking under neither the state nor the federal constitution.

The varied permutations of the taking arguments as set forth in Briefs and Response Briefs are summarized more fully below:

III. BRIEFS

A. Parties with No Position

Alltel, FIXCA/IAC, Sprint, and OPC take no position on this issue.

B. Parties Who Assert That There Is A Taking

Centel/United, Indiantown/Northeast/Quincy/Southland, Southern Bell, and GTEFL argue that mandatory physical collocation raises constitutional questions regarding an impermissible taking of LEC property.

1. Centel/United

Centel/United note that several Local exchange Companies have appealed the FCC's decision. They assert that mandatory physical collocation constitutes a taking of the LEC's property requiring just compensation and that only courts and not regulatory agencies have the authority to determine just compensation. Centel/United conclude that this argument applies to the FPSC.

2. Indiantown/Northeast/Quincy/Southland

Indiantown/Northeast/Quincy/Southland assert that there is a taking problem and simply state that the matter is the subject of an appeal.

3.Southern Bell

Southern Bell contends that a permanent physical occupation authorized by government is a taking without regard to the public interests which it may serve. Southern Bell avers that the intrusion upon LEC property involved in mandatory physical collocation is the type of permanent physical occupation which amounts to a taking. It is Southern Bell's view that if the Commission orders mandatory physical collocation for intrastate purposes, then uninvited entities will physically install their transmission equipment within LEC central office buildings, maintain dominion and control over the portion of the building unwillingly dedicated to their exclusive use, and secure access through other portions of the respective LEC central office to

maintain and repair their equipment. Thus, Southern Bell concludes that a mandatory physical collocation requirement presents a case of permanent physical occupation amounting to a per se taking.

Southern Bell asserts that the FCC mistakenly believed mandatory collocation to be a case of "nonpossessory governmental activity" which is subject to analysis under the three-part "facts and circumstances test" applicable to regulatory takings.

The Company contends that there is no exception from the per se rule for property owned by a regulated public utility and that the constitutional protection against unlawful takings applies as well to private property devoted to a public use. The Company asserts that the State does not enjoy the freedom of an owner and cannot invoke the "public interest" to deprive the owner of its constitutionally protected property rights. Southern Bell asserts that mandatory physical collocation involves an impermissible element of required acquiescence and that regulations which compel the property owner to suffer a physical invasion of his property constitute a per se taking no matter how minute the intrusion.

Southern Bell contends that statutes are not to be read to delegate legislative power to take property unless they do so in express terms or by necessary implication and that there is no legal basis upon which this Commission could find that it has been delegated the authority to effect a taking that (in the absence of such delegated authority) would constitute a violation of Southern Bell's Fifth Amendment rights.

Southern Bell avers that mandatory physical collocation is no less a taking of property because there exists a mechanism under which LECs may receive some payment from collocators for their use of the LECs' property and that the fundamental question of the constitutional right to take property cannot be evaded by offering "just compensation." Southern Bell asserts that the Commission lacks the power to condemn LEC property for a public purpose and that the fact that some compensation may be paid by a third party collocator does not render constitutionally valid an otherwise impermissible taking.

In summation, Southern Bell asserts that the Commission lacks the authority, delegated or otherwise, to engage in a taking of LEC property; that an order of mandatory physical collocation constitutes such a taking; and that mandatory

physical collocation cannot be ordered in this docket without violating the United States Constitution.

4. GTEFL

GTEFL contends that a physical collocation mandate requires permanent physical intrusions which constitute a "taking" of the LEC's property under both the Florida and United States Constitutions. GTEFL asserts that mandatory physical collocation is a taking of the LECs' property under both the Fifth Amendment of the United States Constitution (applied to the states through the Fourteenth Amendment) and Article 10, Section 6, of the Florida Constitution. GTEFL asserts that the fundamental questions relevant to determining a constitutional violation in this case are: Will a physical collocation mandate effect a taking?; and Does the Commission have the ability to take private property? It is the Company's view that the constitutional guarantees protecting private property are the same under both Florida and federal constitutional law, so there is no need to perform separate state and federal analyses.

a. Taking

GTEFL asserts that regulations which compel the property owner to suffer a permanent physical invasion of his property constitute a taking no matter how minute the intrusion and that a taking has occurred to the extent that an owner can no longer own and enjoy his property as he intended.

GTEFL asserts that a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve and that the invasion of LEC property involved in mandatory physical collocation is undeniably the type of permanent physical occupation that amounts to a taking. GTEFL avers that under a mandatory collocation regime, LECs will be required to relinquish portions of their private real property to their competitors for an unlimited duration. Collocators will affix their equipment within the LEC central office building, maintain dominion and control over the portion of the building dedicated to their exclusive use, and secure easements for ingress and egress through other portions of the building. GTEFL concludes that these permanent physical intrusions unmistakably constitute a taking of LECs' property and that a physical collocation directive by this Commission would sanction the uninvited, permanent physical occupation of LEC property by others exercising rights purportedly conferred on them by the Commission.

GTEFL contends that mandatory physical collocation is no less a taking of property merely because the Commission provides a mechanism by which LECs can be compensated through intrastate tariffs requiring some payment by collocators for their use of the LECs' property. GTEFL argues that although the state and federal constitutions prohibit uncompensated takings, the payment of compensation does not transform a taking into something else.

b. Authority To Take Property

GTEFL asserts that the power to take private property must be given in express terms or by necessary implication and that no Florida State agency or private entity may take property without a specific statutory delegation of authority to do so. The Company notes that the legislature has conferred the power of eminent domain in numerous instances. Yet, there is nothing in Chapter 364 which explicitly or implicitly gives the Commission the power to take private property, either for its own use or for the use of others.

GTEFL concludes that since mandatory physical collocation would effect a taking for which this Commission lacks the requisite specific authority, adoption of a physical collocation rule would be unconstitutional. GTEFL urges the Commission to leave it to the LEC to determine, through negotiations with interconnectors, whether expanded interconnection will be furnished by physical or virtual collocation. GTEFL asserts that this is the best approach on both legal and policy grounds because it will minimize the potential disruption if the FCC's mandatory collocation ruling is ultimately struck down on appeal.

C. Parties Who Contend That There Is No Taking:

ATT-C, MCI, FCTA, Teleport, Intermedia, and Time Warner assert that physical collocation does not raise constitutional questions regarding the taking of LEC property.

1. ATT-C

ATT-C asserts that, absent a determination by a U. S. District Court of Appeals for the District of Columbia, the Commission should find that there is no unlawful confiscation. ATT-C avers that unlawful confiscation has been found in instances where public utilities are required to provide service without adequate compensation. ATT-C concludes that the Commission should provide for adequate compensation and should

not enter a finding that physical collocation is unconstitutional per se.

2. MCI

MCI does not elaborate on its position that physical collocation does not raise a taking issue.

3. FCTA

FCTA asserts that there is not a taking issue because expanded interconnection is in the public interest and requiring it is within the Commission's statutory authority which equates to lawful governmental regulation. In addition, interconnectors will fairly compensate the LECs for the use of their facilities.

4. Teleport

Teleport asserts that: the Florida LECs will be compensated by interconnectors; that there is a public purpose for mandating physical collocation which is to promote a modern efficient telecommunications infrastructure; and that the FCC has determined that there is not a taking but rather that mandatory collocation is simply lawful, governmental utility regulation.

5. Intermedia

Intermedia propounds separate arguments for federal and state issues.

a. Federal

Intermedia acknowledges that, under the Fifth Amendment, private property may not be taken for public use without just compensation. Thus, if government takes private property for public use, it must fairly compensate the property owner. Intermedia asserts that requiring mandatory physical collocation does not violate the Fifth Amendment because it is not a taking and that even if mandated physical collocation is a taking, the requirement does not violate the Fifth Amendment because the taking would be for public purpose and a mechanism was provided for LECs to receive just compensation for the use of their property.

b. State

Regarding the state issue, Intermedia asserts that mandated

physical collocation is "occupation" by consent because of the LEC's status as the certificated monopoly provider under Chapter 364. To this end, Intermedia notes that the Constitution of the State of Florida protects citizens of the state against unjust taking of their property. Article X, Section 6 is entitled "Eminent Domain," and provides, in part, that "(n)o private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner." Intermedia contends that for the LECs to argue that mandatory interconnection violates this section, the LECs must establish that forced physical collocated interconnection amounts to a taking.
Intermedia avers that, if the FCC's plan for mandatory physical collocation passes constitutional muster, there appears to be no state constitutional question triggered by an intrastate physical collocation requirement. Assuming that the intrastate space allocation did not exceed that of the FCC, no additional space would be occupied for intrastate purposes, and thus no space would be allegedly "taken" to trigger any provision of the Florida Constitution.

Intermedia asserts that, assuming the Commission orders physical collocation for intrastate purposes and there is no comparable FCC order, there still would be no intrastate taking issue. Intermedia contends that the issue is the Commission's ability to control the use of LEC facilities in the provision of telecommunications services and that the entire purpose of Chapter 364 is to set up a system under which:

a. the LEC is granted a monopoly over certain markets;
b. the Commission may control the use of LEC facilities in the provision of monopoly services;
c. the LEC is guaranteed the opportunity to earn a fair rate of return on its investments in its facilities.

It is Intermedia's view that under this "regulatory bargain," the LECs voluntarily relinquished certain property rights in exchange for certain guarantees and privileges. Intermedia asserts that the right to unfettered use of its property is one of the rights compromised by the LEC when it applied for its certificate and that the LECs long ago agreed to have their property "taken" in exchange for just and reasonable compensation through customer payments approved by the Commission. Intermedia concludes that the "taking by occupation" alleged to be inherent in mandated physical collocation is occupation by consent.

Intermedia asserts that the Commission's authority over LEC realty is no less than the Commission's authority over other LEC facilities. The Company contends that under Chapter 364, it is clear that all facilities used by a telephone company in the provision of telephone service are in fact affected with the public interest. For example, Section 364.02(7), Florida Statutes defines a "telecommunications company" (with certain specific exceptions) to include any entity which offers telecommunications services to the public for hire within the state by use of a telecommunications facility. Pursuant to Section 364.02(8), Florida Statutes, "telecommunications facility" includes ". . . real estate, easements, apparatus, property, and routes used and operated to provide two way telecommunications service to the public for hire within this state." Thus, Intermedia asserts that the Legislature has made it clear that regulated telecommunications facilities include real property as well as hardware. Intermedia concludes that the Commission's regulation appears to be the compensated "taking" of the LEC's facilities in the expansive sense of the term.

Intermedia asserts that Chapter 364, Florida Statutes, specifically authorizes the Commission to order interconnection between companies and that mandated interconnection forces one telephone company to allow its transmission capacity (i.e., spectrum space within its circuits) to be used or <u>occupied</u> by the transmissions of another company. Thus, Intermedia contends that personal property of the telephone companies is in fact being "taken" in a sense as a fundamental part of the regulatory bargain of Chapter 364 and that mandated physical collocation is simply another example of required provision of telecommunication service, involving the forced use (or "occupation") of LEC property.

<u>6. Time Warner</u>

Time Warner asserts that in analyzing whether there is a taking of property by a physical collocation mandate, the Commission must determine:

a. The economic impact of the regulation;
b. The extent to which it interferes with investment-backed expectations; and
c. The character of the governmental action.

Time Warner concludes that mandated physical collocation, survives this analysis and does not give rise to an

unconstitutional physical taking of LEC property.

a. Economic Impact

Time Warner asserts that a physical collocation arrangement does not cause significant economic impact because it allows LECs to recover from interconnectors the costs of providing expanded interconnection services plus reasonable overhead loadings. Time Warner contends that expanded interconnection allows increased pricing flexibility for LECs to compete for any customers and/or services which may be served or offered by interconnectors.

b. Investment-Backed Expectations

Time Warner contends that there is no interference with reasonable LEC investment-backed expectations as a common carrier. The Company notes that Section 364.03 (3), Florida Statutes, provides that:

> Every telecommunications company shall upon reasonable notice, furnish to all persons who may apply therefore and be reasonably entitled thereto suitable and proper telecommunications facilities and connections for telecommunications services and furnish telecommunications service as demanded upon the terms to be approved by the Commission.

Time Warner asserts that as a result of this legislative mandate, LECs and other telecommunications companies within the State of Florida must incorporate into their investment-backed expectations the potential of interconnections and interconnection arrangements which may be ordered by the Commission.

The Company also notes that Section 364.16, Florida Statutes, provides that:

> Whenever the Commission finds that connections between any two or more telecommunications companies, whose lines form a continuous line of communication or could be made to do so by the construction or maintenance of suitable connections at common points, can reasonably be made and efficient service obtained, and that such connections are necessary, the Commission may require such connections be made, may require that

> telecommunications services be transferred, and may prescribe through lines and joint rates and charges to be made, used, observed, and enforce in the future and fix the rates and charges by order to be served upon the company or company's affected.

Time Warner contends that this section further clarifies that the reasonable investment-backed expectations of all telecommunications companies operating within the State of Florida must include the potential of interconnection arrangements which could link the networks of two separate telecommunications companies. It is Time Warner's view that interconnection and linking of networks between telecommunications companies is precisely what is being considered in the expanded interconnection docket and that the existence of these laws advise all prudent businessmen of the possibility of interconnection arrangements. Therefore, Time Warner concludes that within the State of Florida, LECs may not reasonably assert that mandated interconnection interferes with reasonable investment-backed expectations envisioned by Federal case law.

c. Character of Governmental Action

Time Warner contends that in the instant case, the LECs are unable to assert that the character of the governmental action gives rise to an unconstitutional taking because the rapid development and maximum penetration of a communication network which has important educational and community aspects serves legitimate public interests. Time Warner concedes that a taking has occurred when regulation of an owner's property reaches the point of permanent physical occupation. However, the Company asserts that this is in contrast to situations where regulatory interference arises from some public benefit adjusting the benefits and burdens of economic life to promote the common good.

It is Time Warner's view that the purpose of expanded interconnection is to adjust the benefits and burdens of economic life to promote the common good by removing the monopoly control of local telecommunications. The Company contends that such a view
is consistent with the mandate of Section 364.01, Florida Statutes, which provides that:

> The chief responsibility of the Florida Public Service Commission is to encourage cost-effective

> technological innovation and competition in the telecommunications industry if doing so will benefit the public by making modern and adequate telecommunications services available at reasonable prices.

Time Warner contends that this legislative directive combined with Federal case law regarding physical takings indicate that expanded interconnection does not give rise to an unconstitutional taking or confiscation of LEC property. Rather, expanded interconnection is a legitimate use of police power for which the LECs are receiving just compensation. Time Warner concludes that the Commission, through Chapter 364, may require interconnections or even require physical occupation to implement the public good. By structuring an expanded interconnection policy which will ensure recovery by the LECs for the use of their property, there can be no argument that physical collocation gives rise to the unconstitutional physical taking of property as protected by the state and federal constitutions.

Time Warner adds that expanded interconnection does not give rise to the economic impact or investment interference which facilitate a claim of an unconstitutional physical taking and that expanded interconnection is not the aggregation of governmental power which courts have equated with an unconstitutional physical taking. For these reasons, Time Warner concludes that expanded interconnection being considered by the Commission does not give rise to federal or state constitutional questions about taking or confiscation of LEC property.

IV. RESPONSE BRIEFS

A. Parties Who Assert That There Is A Taking

Southern Bell and GTEFL filed Response Briefs on the taking issue.

1. Southern Bell

Southern Bell asserts that Time Warner mischaracterizes the taking standard as requiring an ad hoc determination based upon a three prong test. Bell avers that the Supreme Court actually decided that a physical occupation is a per se taking and that the three prong test applies only when there is no physical occupation.

2. GTEFL

GTEFL argues that the FCC's Constitutional analysis is irrelevant to an evaluation of the Commission's actions. GTEFL avers that mandatory physical collocation is an unauthorized per se taking of private property. GTEFL asserts that Time Warner has misapplied relevant law and that Intermedia has ignored relevant law. GTEFL reiterates that compensation will not avoid a taking and that the Commission has no authority to take the LEC's private property. It is GTEFL's position that the power to regulate in the public interest does not include the right to take private property and that the authority to order connections between carriers does not include the authority to take property. GTEFL concludes that negotiated interconnection is the only way to avoid constitutional violations.

B. Parties Who Contend That There Is No Taking:

Time Warner and FCTA filed a combined Response Brief. Intermedia filed a Response Brief.

1. Time Warner/FCTA

Time Warner/FCTA argue that the Florida Supreme Court has dictated that taking cases should be governed by the United States Supreme Court's decision in Loretto which employs a three prong test to determine whether a physical taking has occurred. Time Warner/FCTA reiterate that the three prongs address: 1) the economic impact of regulation; 2) the extent to which it interferes with investment-backed expectations; and 3) the character of the governmental action. In this regard, Time Warner/FCTA argues that: 1) no substantial economic harm results from the implementation of the expanded interconnection policy; 2) the expanded interconnection policy is an extension of existing law which reasonable individuals would incorporate into their business expectations; 3) the proposed expanded interconnection policy is a limited governmental interference adjusting the benefits and burdens of economic life to maximize Florida's telecommunications infrastructure for the public good. Time Warner/FCTA argues that the proposed expanded interconnection policy is a lawful governmental regulation of common carriers protecting the common welfare which does not violate the takings prohibitions of the Constitution in that the LECs will receive just compensation for the limited use of their property.

2. Intermedia

Intermedia argues that mandated occupation of "used and useful" property for the very purpose for which it has been declared used and useful is not a taking under the regulatory scheme that provides fair compensation for occupation. Intermedia contends that a taking cannot be reduced to formula but must be determined ad hoc on the specific facts.

Intermedia avers that historically, the debate over what constitutes a taking has been a debate over where one draws the line between regulation and eminent domain. Intermedia distinguishes property employed or dedicated to the public use as a separate line of case law. Regarding utilities, Intermedia contends that there has always been economic regulation and forced occupation. Intermedia asserts that the issue is whether there is just and reasonable compensation, not whether there is a taking of property which the owner has committed to public use. Under this approach, Intermedia avers that forced occupation is permissible provided the property of the LEC is dedicated to the public use, and the LEC is fairly compensated for the use of the property. Intermedia contends that the public use issue is answered by the LEC dedicating its facilities as used and useful in providing public utility service. Intermedia contends that case law finding impermissible takings involving utilities is limited to mandated uses other than those for which the utility property has dedicated for use in the public interest. In this case, Intermedia argues that the Commission could only order collocation for purposes specifically contemplated under Chapter 364.

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

RECOMMENDATION: Yes. The Commission should require the LECs to provide physical collocation to all interconnectors upon request as envisioned by the FCC. The Commission should allow for interconnectors to choose virtual collocation if desired.

POSITIONS OF PARTIES

INTERMEDIA: Yes, the Commission should require physical collocation. Physical collocation insures that the LEC and collocators interconnect with the LEC's network on the same basis. Virtual collocation, however, is both technically and economically inferior to physical collocation. Moreover, a "LEC choice" policy would be inefficient because it would conflict with the FCC's mandatory physical collocation policy.

ALLTEL: ALLTEL has no position on this issue as it relates to Tier 1 local exchange companies. The FPSC should not require physical and/or virtual collocation for Tier 2 local exchange companies like ALLTEL. See ALLTEL's position on Issue 7.

ATT-C: In concert with the ruling adopted by the FCC, the Commission should require physical collocation where adequate space is available and virtual collocation in all other cases.

CENTEL: Centel adopts the position of United on this issue.

FCTA: 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.

FIXCA: No position.

GTEFL: No. The Commission should not require either physical or virtual collocation. Instead, it should allow LECs and interconnectors to negotiate their own collocation arrangements. Under this policy, the access market can develop in accordance with state specific conditions.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: The Commission should not require mandatory physical collocation, and no interconnection requirements should be imposed upon Indiantown, Northeast, Quincy or Southland

without giving consideration to the specific and peculiar circumstances pertaining to each of the individual companies.

IAC: No position.

MCI: The opportunities for the development of competition through expanded interconnection will be best facilitated if the Commission adopts the same structure, standards, and conditions for physical and/or virtual collocation as adopted by the FCC in its order in CC Docket No. 91-141.

SOUTHERN BELL: This Commission should not require either form of collocation. Instead, each LEC should have the option of providing either physical or virtual interconnection arrangements.

SPRINT: The Commission should mirror the interstate requirements regarding collocation arrangements. The FCC ordered LECs to provide physical collocation arrangements with exemptions for inadequate central office space, negotiated virtual arrangements or where states have established a virtual collocation requirements.

TELEPORT: Florida should require LECs to offer physical collocation. Physical collocation ensures that interconnectors are provided interconnection on the same terms and conditions as the LECs interconnect their own high capacity networks. A physical requirement would also allow for uniformity between state and federal requirements.

TIME WARNER: The Commission should require physical collocation consistent with the FCC's order on expanded interconnection.

UNITED: The Florida Commission should not mandate any particular form of collocation. As set forth in the Company's position on Issue 3, the LECs and interconnectors should be able to negotiate physical or virtual collocation on a case-by-case basis, with the same terms and conditions available to all interconnectors.

OPC: Yes. The Commission should follow the same rules promulgated by the FCC.

STAFF ANALYSIS: The various positions of the parties can be categorized in the following manner:

GTEFL, SBT, and United/Centel all believe that the Commission should not mandate any particular form of

interconnection but instead should allow the LEC and the interconnector to negotiate their own arrangement.

ICI, ATT-C, FCTA, MCI, Sprint, Teleport, Time Warner and OPC all assert that the Commission should be consistent with the FCC's ruling and require the LECs to offer physical collocation.

Alltel, Indiantown, Northeast, Quincy, and Southland believe that they should not be required to provide physical and/or virtual collocation at this time. (This will be addressed in Issue 7)

FIXCA and IAC have no position on this issue.

The FCC defines physical collocation as a situation where "the interconnecting party pays for LEC central office space in which to locate the equipment necessary to terminate its transmission links, and has physical access to the LEC central office to install, maintain, and repair this equipment." (FCC Report & Order, Released 10/19/92, para 39) Under virtual collocation, interconnectors would be allowed to "designate the central office transmission equipment dedicated to their use, as well as monitor and control their circuits terminating in the LEC central office." (FCC Report & Order, Released 10/19/92, para 44) Therefore, under both physical and virtual collocation the equipment used to terminate interconnected circuits would be located in the LEC central office. The distinction that is made by the FCC is a matter of who owns and maintains the interconnection equipment: with physical it would be the interconnector, while with virtual it would be the LEC.

The FCC mandated that all Tier 1 LECs make physical collocation available, under tariff, to all interconnectors that request it. Concerning virtual collocation, they state that the parties are free to negotiate virtual collocation arrangements if preferred. The FCC has allowed for the LECs to request a waiver of the physical collocation requirement in instances where a lack of central office space prohibits the LEC from providing physical collocation. If the waiver is granted then the LEC is obligated to provide virtual collocation. (FCC Report & Order, Released 10/19/92, para 39-41)

Tier 1 LECs are defined as those companies having annual revenues from regulated operations of $100 million or more. The Tier 1 LECs in Florida include GTEFL, SBT and United/Centel. As mentioned above, each of these companies believes that this Commission should allow collocation, but not mandate any

particular type. (Beauvais TR 309-310, Denton TR 393, Poag TR 496-497) The LECs believe this is where the Commission should diverge from the FCC's ruling however, they do acknowledge some concern with having varying policies. GTEFL's witness Beauvais testified that "the FCC's Order does not compel this Commission to adopt the same requirements for intrastate interconnection as those at the interstate level." He goes on to state that "as a practical matter, however, separate intrastate and interstate interconnection regimes would prove unworkable." He believes that having unified plans would limit the administrative costs of the expanded interconnection service and remove some of the incentive to misreport the jurisdictional nature of the traffic. (TR 314) Southern Bell's witness Denton echoes this belief in that "vastly different expanded interconnection structures for intrastate and interstate services could hinder the development of services that could be offered as a result of expanded interconnection." (TR 391) Centel/United's witness Poag believes that "in view of the user's ability to send both intrastate and interstate traffic across the same facility, the terms and conditions for use of the facility should be the same, regardless of jurisdiction, to avoid forum shopping." (TR 495) Witness Denton testifies that allowing the LECs to have the option of providing "either physical or virtual arrangements will enable the coordination of intrastate and interstate collocation architectures for those interconnectors who have a need for both jurisdictional arrangements." (TR 393-394)

United Telephone is the only LEC in Florida that is on record as having customers (other than ATT-C) collocated with their facilities. Witness Poag asserts that United probably has 15 situations where there are collocators in his central offices, and no one had to mandate him to do it. (TR 507) He states that they are in the process of negotiating with a company that wants to put some computer equipment in one of their central offices. (TR 521) He acknowledges that ICI is collocated within United's Orangewood office for space on the frame, and that they were able to reach agreeable terms. (TR 524) Poag believes that the fact that United has a conditioned environment and emergency backup power is the reason they are attractive to alternative users. (TR 521) He admits that these collocation arrangements are not "expanded interconnection" but simply a floor space lease accompanied by tariffed switched and/or special access services. (EXH 30, p. 20) With a floor space lease the interconnector will not incur certain service charges, for example mileage. Staff believes the difference is that the purpose of expanded interconnection is to increase competition with the LEC by giving collocators access to a broader customer base through utilization

of the LEC network.

With the exception of FIXCA and IAC, who took no position, the non-LECs all believe that this Commission should adopt the FCC's mandatory physical collocation standard. Witnesses for ATT-C, ICI, Sprint and Teleport testified that this would allow uniformity between state and federal requirements. (Guedel EXH 6, p. 4, Canis TR 51, Rock TR 446, Kouroupas TR 253) ICI's witness Canis argues against the LECs "negotiation" proposal because since the LECs "own and control the central office," the collocators would not have any leverage in negotiations with the LEC. He adds that it would be inefficient for the Commission to establish a collocation policy that is inconsistent with the FCC's. (TR 607) Teleport's witness Kouroupas is in agreement that a physical collocation requirement would allow uniformity between state and federal jurisdictions. He also believes that physical collocation ensures that "interconnectors are provided interconnection on the same terms and conditions as the LECs interconnect with their own high capacity networks." (TR 253) Kouroupas states that "allowing the LEC to decide whether or not to provide physical collocation robs the AAV of its only negotiation leverage, and leaves it unable to compel the LEC to provide quality, cost effective collocation arrangements." This will put the AAV in a position of accepting whatever quality of service the LEC wishes to give them "because the LEC is not only the AAVs' crucial supplier, but also -- from the LEC's perspective -- its primary competitor." (TR 257-258)

ICI's witness Canis believes that virtual collocation is operationally, economically and technically inferior to physical collocation. (TR 33) He claims that under virtual collocation, "AAV's are constrained in their ability to upgrade, modify, or expand their networks." Such changes would have to be scheduled with the LEC, who would ultimately determine when these changes would take place. With a physical collocation arrangement, an interconnector may install or remove equipment as it deems appropriate. (TR 34) Dependency on the LEC for maintenance and servicing of virtually collocated equipment is another concern. Canis states that virtual collocation requires LEC personnel to be familiar with interconnector equipment and that the level of their hands on experience could adversely affect the "quality and promptness of service efforts." (TR 35) Teleport's witness Kouroupas echoes these concerns by adding that virtual collocation is inadequate because it allows the LECs to install, repair and maintain equipment to meet the LEC's standards rather than the interconnectors standard. "This allows the LEC to control the essential character of an AAV's services." (TR 261)

Teleport and Sprint agree that technologically the same interconnection opportunities are available with both physical and virtual collocation. (Kouroupas TR 255, Rock TR 446) Rock expands by stating that as long as LECs offer virtual interconnectors the same level of service at the same price for common rate elements, he does not believe that physical interconnection is necessary. However, he believes that since the FCC has established a policy for physical collocation, this requirement would have to apply to any arrangement providing both interstate and intrastate interconnection.

GTEFL states that security is another factor to consider when deciding whether or not to mandate physical collocation. (Beauvais TR 309) He testifies that the LECs will have to set aside separate space within the central office and then provide secure access to that space. (TR 307) Beauvais asserts that without the LEC having "complete discretion to control entry to its central offices," potential for interference with LEC operations increases dramatically. (TR 309) Witness Poag stated that United provides a separate entrance and a separate cage facility for their interconnectors. Where this is not the case, United requires an escort, but they try to set their arrangements up so this is not necessary. (TR 523) Witness Beauvais adds that LEC employees must suffer construction intrusions, unrestricted access to their facilities, which will impede their ability to exchange freely information about LEC operations. (TR 308)

ICI's witness Canis believes that the Commission should not presume that only LEC employees have access to LEC central offices and wire centers. He asserts that "as a normal business practice, LECs regularly provide central office access to outside contractors, who are issued photo IDs and are permitted free and regular access to the most sensitive of central office equipment." Canis adds that if a LEC is concerned about control over AAV personnel, that they are free to designate separate secured interconnection areas which do not permit access to LEC common areas. (TR 45)

Staff believes that security is an important concern for the LECs, but that it is one that can be overcome. For physical collocation, the option of separate access facilities will protect both the interconnector and the LEC. This will help afford the LEC control over interconnector facilities and their employees. This type of arrangement should not be financially burdensome for the LEC because cost recovery for building these facilities will be tariffed as addressed in Issue 16. We

understand the concern that construction may cause some disruption for LEC employees, but this will already occur for federal interconnection arrangements. Overall, staff does not believe that security will be a major issue for the LEC.

Staff believes that this issue of whether or not the Commission should mandate physical and/or virtual collocation could not have been divided along more cleaner lines. The LECs believe this Commission should allow expanded interconnection but not mandate any particular type. The non-LECs, believe that this Commission should be consistent with the FCC and require the LECs to offer physical collocation. The LECs want to be able to negotiate interconnection arrangements with collocators. Staff believes such a negotiation arrangement has the potential to be one sided since the LEC owns and controls the central office. GTEFL's witness states that they have never received a request for an expanded interconnection arrangement. (Beauvais EXH 10, p.20) Centel/United's witness testifies that they have 15 collocators in their central offices. (Poag TR 507) Staff finds it curious that United is the only LEC in Florida that has been approached for collocation. Even if this is not the case, staff believes it is important for this Commission to be consistent with the FCC and mandate physical collocation. As pointed out by the LECs, unified plans will limit administrative costs, help prevent tariff shopping, and remove some incentives for misreporting the jurisdictional nature of the traffic. Staff believes this has merit because to the interconnector desiring physical collocation, jurisdiction does not make a difference when considering the equipment and floor space needed. Interconnectors will buy out of which ever tariff is more attractive to them.

Even though staff believes that the Commission should mandate physical collocation, we do not wish to preclude any potential interconnectors from seeking virtual collocation. The FCC found that for virtual collocation, interconnectors would be allowed to "designate the central office transmission equipment dedicated to their use, as well as monitor and control their circuits terminating in the LEC central office." (FCC Report & Order, Released 10/19/92, para 44) Witness Kouroupas supports the FCC's finding by stating that in a virtual collocation arrangement, the collocators must be able to select their own electronics and be able to remotely monitor and control their equipment. (TR 260) Staff believes that Kouroupas is the only witness to directly address this aspect of virtual interconnection. As stated earlier, there is concern about having differing policies across jurisdictions. Therefore, staff

agrees that virtual collocators should be allowed to designate the central office transmission equipment dedicated to their use, as well as monitor and control their terminating circuits in the LEC central office.

Therefore, staff is recommending that the Commission require the LECs to provide physical collocation to all interconnectors upon request, as ordered by the FCC. The Commission should allow interconnectors to choose virtual collocation if desired.

ISSUE 7: What LECs should provide expanded interconnection? [CHASE]

RECOMMENDATION: Only Tier 1 LECs (Southern Bell, GTEFL, United, and Centel) should be required to offer expanded interconnection as a tariffed generally available service. However, if a non-Tier 1 LEC receives a bona fide request for expanded interconnection and the terms and conditions cannot be negotiated by the parties, then the Commission should review such requests on a case-by-case basis. If the parties agree on expanded interconnection, then the terms and conditions would also be set by individual negotiation.

POSITIONS OF PARTIES

INTERMEDIA: Only Tier 1 LECs should be required to offer collocation as a tariffed, generally available service. Nevertheless, the Commission should review requests for collocation in non-Tier 1 LEC central offices on a case-by-case basis where the LEC has the technical ability to accommodate collocation.

ALLTEL: ALLTEL has no position on this issue as it relates to Tier 1 companies. As it relates to Tier 2 companies like ALLTEL, the FPSC's policy on expanded interconnection for alternative access vendors should mirror the policy recently adopted by the FCC, i.e., expanded interconnection should not be required for Tier 2 local exchange companies like ALLTEL. The FCC Order applies only to Tier 1 local exchange companies and, for good reason, specifically exempts all others.

ATT-C: The Commission should order all FCC designated "Tier 1" companies operating in Florida to provide expanded interconnection for the provision of special access services.

CENTEL: Centel adopts the position of United on this issue.

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

FIXCA: No position.

GTEFL: If the Commission requires expanded interconnection, GTEFL would support extension of this requirement to large (Tier 1) LECs only.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: Indiantown, Northeast, Quincy and Southland should not be required to provide expanded interconnection, but should be given the option to permit interconnection upon appropriate negotiated terms and conditions where circumstances suggest that there is a need to do so.

IAC: No position.

MCI: The opportunities for the development of competition through expanded interconnection will be best facilitated if the Commission adopts the same structure, standards, and conditions for determining what LECs should provide expanded interconnection as adopted by the FCC in its order in CC Docket No. 91-141.

SOUTHERN BELL: Southern Bell is not opposed to this Commission's adopting the same approach as did the FCC, and requiring expanded interconnection only by Tier 1 LECs.

SPRINT: The Commission should require all Tier 1 LECs to file expanded interconnection tariffs for the provisioning of special access.

TELEPORT: All LECs, including non-Tier 1 LECs (those with less than $100 million in annual revenues from regulated service), should be included in an intrastate interconnection policy in Florida so that all consumers may benefit from the improved telecommunications infrastructure brought about by competition.

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

UNITED: At this time, only Tier 1 LECs should be required to offer expanded interconnection. United Telephone concurs with the FCC in its Order FCC 92-440, paragraphs 56-58. In addition, any potential interconnector should be subject to the same set of rules and requirements. See the Company's position on Issue 12.

OPC: The four largest local exchange companies should be required to provide expanded interconnection.

STAFF ANALYSIS: This issue addresses which local exchange companies in Florida (Tier 1 or non-Tier 1 LECs) should be required to offer expanded interconnection. Tier 1 LECs are those with more than $100 million in annual revenues from regulated services. In Florida, Centel, GTEFL, Southern Bell, and United are the only Tier 1 LECs. The other nine LECs in

Florida are non-Tier 1 LECs (those with less than $100 million in annual revenues from regulated services).

ALLTEL, ATT-C, FCTA, MCI, Southern Bell, and Sprint assert that the Commission should mirror the FCC in regards to which LECs should provide expanded interconnection. The FCC, in Docket 91-141, limited expanded interconnection to the Tier 1 LECs (those with more than $100 million in annual revenues from regulated services) because it found that there would not likely be very high demand in the smaller LECs' service areas. In addition, the FCC found that requiring smaller LECs to provide expanded interconnection might tax their resources and harm universal service and infrastructure development in the rural areas.(FCC Order, Released 10/19/92, para 56)

After analysis of the evidence, staff believes that there are basically three possibilities from which the Commission can choose in determining what LECs should be required to provide expanded interconnection. The first possibility is to treat Tier 1 and non-Tier 1 LECs the same in regard to the Commission's policy of expanded interconnection. The second possibility is to totally exclude non-Tier 1 LECs from being required to provide expanded interconnection as did the FCC. The third possibility is to adopt a middle ground, which would provide that only Tier 1 LECs should be required to offer collocation as a tariffed, generally available service, but would give the non-Tier 1 LECs the flexibility of offering collocation through individually negotiated terms and conditions if an AAV makes a request.

Only one party to the docket argues that this Commission should treat Tier 1 and non-Tier 1 LECs the same for the purpose of collocation, and it does not argue this exactly. Teleport believes that all LECs should be required to offer expanded interconnection in Florida, but non-Tier 1 LECs should only be required to provide expanded interconnection upon a bona fide request. It also contends that the Commission should set the terms and conditions of interconnection for non-Tier 1 LECs as a part of this proceeding, and after requests are received, the non-Tier 1 LEC should file a tariff. (Kouroupas TR 273-274)

Teleport asserts that terms and conditions applicable to all LECs should be set in this proceeding so that consumers throughout the state can benefit from the expanded interconnection policy and not just the consumers in the more urban areas.(EX 9, pp.29-30) In addition, Teleport believes that if the terms and conditions are set in this proceeding, then future proceedings addressing the same issue would not be needed.

(Kouroupas TR 275-276)

Intermedia, ALLTEL, ATT-C, Centel, FCTA, GTEFL, Indiantown, Northeast, Quincy, Southland, MCI, Southern Bell, Sprint, Time Warner, United, and OPC argue that only Tier 1 LECs should be required to provide expanded interconnection.. FIXCA and ICA took no position on this issue.

GTEFL believes, in theory, that all LECs should be required to offer expanded interconnection; however, since the FCC has restricted mandatory collocation to Tier 1 LECs, GTEFL asserts it is probably best for Florida to do the same because the costs of preparing for collocation will not be recoverable due to insufficient demand for such a service in non-urban areas. (Beauvais TR 313)

Indiantown, Northeast, Quincy, and Southland are opposed to any mandatory form of collocation for non-Tier 1 LECs. They believe that it is contrary to the public interest to impose physical collocation the same as Tier 1 LECs which have vastly greater annual revenue, urban service, and immediate competitive pressure.(Carroll TR 663) These small LECs also believe that the Commission should not mandate collocation for the non-Tier 1 LECs because it would disadvantage rural subscribers through pressures to raise local rates and hinder universal service. (Carroll TR 663)

Intermedia contends that some middle ground can be reached between mandating all LECs and mandating only Tier 1 LECs to provide collocation. Intermedia believes that Tier 1 LECs should be mandated to provide physical collocation as a tariffed generally available service, but it believes that the Commission should review requests for collocation to non-Tier 1 LECs on a case-by-case basis, to determine whether collocation is feasible and should be provided. (Canis TR 117-118)

At the same time, Indiantown, Northeast, Quincy, and Southland believe that with a legitimate request from a potential interconnector, who is approved by the Commission, the non-Tier 1 LECs would allow collocation under individually negotiated terms and conditions. (Carroll TR 665)

Southern Bell believes that if the Commission gives the LECs flexibility in providing either physical or virtual collocation, then non-Tier 1 LECs might be able to provide collocation. (EX 18, p.5)

However, several of the parties that were in favor of only mandating Tier 1 LECs also argue that some type of middle ground could be reached. Staff believes that this would be the best option for the Commission because it would afford most or all of the consumers in Florida the benefits of expanded interconnection.

To date there has not been a request for collocation with a non-Tier 1 LEC, thus it appears that handling requests before the Commission on a case-by-case basis should not be too burdensome. (Canis TR 175) Further, Southern Bell argues that if there are disputes over the arrangements it would be to the LEC's advantage to work out the differences because it would want to keep its customers on the network instead of losing them completely. (EX 21, p.45-46)

Staff believes that collocation for expanded interconnection should benefit as many people as possible. Approximately 98.5% of the access lines in Florida are located in the territory of Tier 1 LECs. (EXH 9, p.21) In addition, most parties agree that mandating all LECs to offer collocation would put an undue burden on the small LECs, who will not likely have the demand for collocation. Therefore, staff believes that it does not make sense to mandate expanded interconnection for the non-Tier 1 LECs.

However, staff believes that by allowing non-Tier 1 LECs to negotiate bona fide requests and having the Commission settle differences that cannot be worked out between the parties, the benefits could be realized by most or all of the customers in Florida. This approach is a little different from the FCC's interstate mandate. The FCC totally excluded non-Tier 1 LECs from being required to offer any form of collocation. Staff is recommending that the non-Tier 1 LECs be given the flexibility to offer expanded interconnection under individually negotiated terms and conditions. The difference is that under the FCC's mandate, the non-Tier 1 LECs do not have to offer expanded interconnection if the parties cannot negotiate terms and conditions. Under staff's recommended approach, if the parties cannot negotiate terms and conditions, then the Commission would review these requests on a case-by-case basis. Therefore, depending what the Commission determines when reviewing the case, non-Tier 1 LECs would or would not be required to offer expanded interconnection.

With little demand expected for the non-Tier 1 LECs, and these LECs not wanting their customers to leave their networks,

staff believes that the AAVs would not be asking the Commission to settle differences that often.

Of the three possibilities discussed in this issue, all but one of the parties was in favor of either the second or the third option. All parties except Teleport were in favor of the Commission only requiring Tier 1 LECs to offer expanded interconnection. A majority of the evidence on this issue supports only mandating Tier 1 LECs to offer collocation. Most of the arguments noted that the costs associated with provisioning the service would not be recoverable by the smaller LECs due to insufficient demand in rural areas. (Beauvais TR 313-314)

Therefore, staff recommends that only the Tier 1 LECs (Southern Bell, GTEFL, United, and Centel) should be required to offer expanded interconnection as a tariffed generally available service. However, if a non-Tier 1 LEC receives a bona fide request for expanded interconnection and the terms and conditions cannot be negotiated by the parties, then the Commission should review such a request on a case-by-case basis.

For example, the Commission could review the interconnector's request to determine if it is in the public interest. During the review the Commission could consider if requiring the non-Tier 1 LECs to offer expanded interconnection would tax the non-Tier 1 LECs resources and harm universal service and infrastructure development in their territory. In addition, the Commission could determine such things as what type of effect collocation would have on the non-Tier 1 LEC's revenue, if collocation would create substantial stranded investment for the non-Tier 1 LEC, and if the non-Tier 1 LECs have the space availability to offer collocation. The above examples are just a few of many possible items that the Commission could review.

The Commission should determine at the time it reviews a request to a non-Tier 1 LEC, that cannot be negotiated by the parties, whether the interconnector should be subject to the tariffs that are set in this proceeding.

ISSUE 8: Where should expanded interconnection be offered? [REITH]

RECOMMENDATION: Expanded interconnection should be offered out of all LEC offices that are used as rating points for special access or private line services. Initially, expanded interconnection should be offered out of those central offices that are tariffed in the interstate jurisdiction. Additional offices should be added within 90 days of a written request to the LEC by an interconnector.

POSITIONS OF PARTIES

INTERMEDIA: The Commission should adopt the FCC compromise in which a LEC initially would tariff only the top 10% of the COs in its service area. However, collocators would be allowed a period within which to request the tariffing of additional COs, with a 45 day response requirement placed on the LECs.

ALLTEL: No position.

ATT-C: Expanded interconnection should be offered at all rating points, including all LEC central offices.

CENTEL: Centel adopts the position of United on this issue.

FCTA: 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.

FIXCA: No position.

GTEFL: Expanded interconnection should be offered only where sufficient demand exists or is anticipated to generate incremental revenues greater than the incremental costs associated with the offering.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: Expanded interconnection should be offered in those situations where the net revenue retained by Indiantown, Northeast, Quincy or Southland would exceed the costs of provision of the service and the companies are permitted to negotiate favorable terms and conditions.

IAC: No position.

MCI: The opportunities for the development of competition through expanded interconnection will be best facilitated if the Commission adopts the same structure, standards, and conditions for where expanded interconnection should be offered as adopted by the FCC in its order in CC Docket No. 91-141.

SOUTHERN BELL: Expanded interconnection could be offered in all Southern Bell central offices in Florida where sufficient space is available.

SPRINT: Expanded interconnection offerings should be required where interconnectors have indicated a desire to collocate. While the Commission should nurture the competitive process, the decision of where an interconnector wants to collocate should be left up to the interconnector.

TELEPORT: Expanded interconnection should be available at all central offices of Tier 1 and non-Tier 1 LECs. Teleport agrees that the Commission should mirror the FCC's rule in which a LEC initially would tariff the top 10 percent of central offices within a service area as long as AAV's can request the tariffing of additional central offices.

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

UNITED: To avoid unnecessary administration and cost, expanded interconnection should only be tariffed for those central offices where it is likely to occur. If additional locations are requested, they can be added. For consistency, the intrastate serving wire centers should match those approved for interstate expanded interconnection.

OPC: No position.

STAFF ANALYSIS: Staff believes this issue consists of two distinct aspects: (1) From what types of LEC facilities (e.g., wire centers, remote switching nodes, etc.) should expanded interconnection be provided; and (2) With respect to those types of facilities, from specifically which ones should expanded interconnection be offered?

As mentioned, staff views the first part of this issue as addressing from which type of facilities in the LEC network

should expanded interconnection be offered. Expanded interconnection is designed to give collocators access to a larger customer base. In order to achieve this, interconnection has to occur in the LEC network where traffic is aggregated. These points, or nodes, include facilities such as end offices, serving wire centers and remote distribution nodes. Each one of these network nodes houses either switching facilities, electronics that combine traffic, or a mixture of both.

ALLTEL, FCTA, FIXCA, Indiantown, Northeast, Quincy, Southland, IAC, OPC, Southern Bell and Time Warner did not take a position on this aspect of the issue.

ATT-C, Centel/United, GTEFL, ICI, MCI, Sprint and Teleport all believe that this Commission should follow the guidelines set forth by the FCC. (Guedel EXH 6 p. 5, Poag EXH 30 p. 1, Beauvais EXH 10 p. 16, Canis EXH 4 p. 26, Rock EXH 24 p. 18, Kouroupas EXH 8 p. 17) The FCC ordered the LECs to provide expanded interconnection at serving wire centers, end offices, remote distribution nodes and any other points that the LECs treat as a rating point -- "a point used in calculating the length of interoffice special access links." (FCC Report & Order, Released 10/19/92, para 103) The FCC found that these locations are designed as points that provide aggregated access to end user premises and IXC POPs. Tandem offices were specifically excluded from special access interconnection but will be addressed under switched transport interconnection. (FCC Report & Order, Released 10/19/92, para 103) However, the FCC does state that expanded interconnection obligations extend to central office buildings that house end offices or serving wire centers as well as tandem switches, but not to buildings that contain only tandem switches and are not used as a rating point for special access services. (FCC Report & Order, Released 10/19/92, footnote 241) ICI's witness Canis asserts that tandem switches were excluded because they are considered mainly to provide switched service connections and are not normally considered to provide special access services. However, Canis does believe that this restriction is unnecessary because the LECs can route special access services through the offices that house only tandems without using the switching functions. (EXH 4 p. 26) Staff does not believes it is appropriate to include tandem switches in this phase of the docket because they are considered mainly to provide a trunk-to-trunk switched connection and are not normally considered to provide special access or private line services. However, tandem switches should be considered when this Commission addresses switched access interconnection.

Staff agrees that offices which are candidates for expanded interconnection are all LEC offices that are considered to be rating points when calculating mileage charges. These offices are aggregation points for traffic from the end user network and include but are not limited to wire centers, central offices and remote distribution nodes. Staff believes buildings that only house tandem switches and are not used as a rating point for special access or private line services, should not be considered until Phase II of this docket, which will address switched access interconnection.

With respect to those types of facilities addressed above, the following discusses specifically from which ones should expanded interconnection should be offered.

FCTA, Time Warner and Centel/United all believe that expanded interconnection should be offered out of those offices where it is likely to occur. They assert that intrastate serving wire centers should match those approved for interstate expanded interconnection and that additional locations can be added upon request. (Poag TR 495)

ICI, MCI and Teleport all state that the Commission should adopt the FCC's order in which the LEC would initially tariff the top 10% of the central offices within its serving area. ICI adds that collocators should be allowed a certain period of time to request tariffing of additional central offices. Teleport concurs but thinks that interconnection should be made available in all central offices of both Tier 1 and non-Tier 1 LECs.

ATT-C is not as specific in its position as Teleport but believes that expanded interconnection should be offered at all rating points, including all LEC central offices. (Guedel EXH 6 p. 5) Staff interprets this as an argument for wanting interconnection from both Tier 1 and non-Tier 1 LECs. This was discussed in Issue 7.

Southern Bell states that expanded interconnection should be offered in all their Florida central offices where space permits. Witness Denton cautions that there may be some central offices without enough space for either physical or virtual collocation. (TR 396) Staff specifically addresses this topic in issue 13.

GTEFL, Indiantown, Northeast, Quincy and Southland state that expanded interconnection should be offered where demand exists and the revenues retained will exceed the cost to provision the service. Staff believes these are tariff related

concerns and should be addressed in the LECs individual rates.

Sprint's position is that the decision of where expanded interconnection is offered should be left up to the interconnector not the LECs.

ALLTEL, FIXCA, IAC and OPC did not take a position on this issue.

Teleport witness Kouroupas testified that expanded interconnection should be offered statewide in all central offices. (TR 259) Staff interprets this as an argument for wanting interconnection from both Tier 1 and non-Tier 1 LECs. This was discussed in Issue 7.

ICI witness Canis elaborates that the Commission should adopt the FCC's method of requiring the LEC to tariff the top 10% of the central offices in its service area. These tariffed central offices would be the ones in which interconnectors would most likely want to collocate. He adds that since potential interconnectors may wish to collocate in additional central offices, the Commission should establish a time period within which collocators could file a bona fide request to tariff additional COs. Under this approach, "the LECs need not tariff offices where there is unlikely to be an immediate need for collocation; however, upon request, collocators can achieve expanded interconnection in any CO where they foresee competitive opportunity." (TR 52) He defines a bona fide request as being a written request that meets the standards established by that regulatory body. (TR 174)

Staff believes Sprint's witness Rock echoes Mr. Canis but approaches it from another direction, by testifying that expanded interconnection should be required where interconnectors have indicated a desire to collocate. Witness Rock elaborates that "the decision of where an interconnector wants to collocate must be left up to the interconnector." (TR 447) Once a bona fide request is received in a reasonable period of time, LECs should be required to set rates for interconnection. He asserts that "limiting interconnection to specific central offices would enable the LEC to determine where competitive entry is feasible." (TR 447)

Staff does not believe it is necessary for the LECs to tariff all possible interconnection locations within their service territories, only those where interconnection is likely to occur. We believe that requiring the LECs to offer expanded

interconnection out of the same offices that have been tariffed at the interstate level is a logical progression that would be least burdensome for the LECs. We also believe that additional locations may be desired by interconnectors and that these offices should be added within 90 days pending a written request to the LEC by an interconnector.

In summary, staff is recommending that expanded interconnection be offered out of all LEC offices that are used as rating points for special access or private line services. Initially, expanded interconnection should be offered out of those central offices that are tariffed in the interstate jurisdiction. Additional offices should be added within 90 days of a written request to the LEC by an interconnector.

ISSUE 9: Who should be allowed to interconnect? **[CHASE]**

Approved Stipulation:

Any entity should be allowed to interconnect on an intrastate basis its own basic transmission facilities associated with terminating equipment and multiplexers except entities restricted pursuant to Commission rules and regulations.

STAFF ANALYSIS: This stipulation was approved at the September 13, 1993 hearing. (TR 10-11) Therefore, this issue is resolved.

ISSUE 10: Should the same terms and conditions of expanded interconnection apply to ATT-C as apply to other interconnectors? [YATES]

Approved Stipulation:

ATT-C should be allowed to interconnect intrastate Special Access Arrangements to the same extent as other parties, subject to the requirements adopted by the FCC in CC Docket 91-141 regarding preexisting collocated facilities.

STAFF ANALYSIS: This stipulation was approved at the September 13, 1993 hearing. (TR 10-11) Therefore, this issue is resolved.

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

RECOMMENDATION: Yes. In addition to the standards discussed in Issues 8, 13 & 14, the Commission should adopt the following as standards:

1) LECs are to specify an interconnection point or points as close as reasonably possible to the central office. These interconnection points must be physically accessible to both the LEC and interconnectors on non-discriminatory terms. Under virtual collocation, the interconnection point would constitute the demarcation between the interconnector and LEC facilities. For physical collocation, this would constitute the entry point for interconnector cable in which the LEC would be compensated for the conduit and other facilities utilized by the interconnector.

2) LECs are required to provide at least two separate points of entry to a central office whenever there are at least two entry points for LEC cable.

3) Expanded interconnection requirements should apply only to central office equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers.

POSITIONS OF PARTIES

INTERMEDIA: Yes. For physical collocation, the Commission should simply establish that the standards for interconnection are the same technical standards followed by the LEC for its own interconnection to its network. For virtual collocation the Commission should prescribe certain minimal standards to protect against LEC abuse.

ALLTEL: No position.

ATT-C: Yes. This Commission should require standards consistent with those adopted by the FCC in CC Docket 91-141.

CENTEL: Centel adopts the position of United on this issue.

FCTA: 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.

FIXCA: No position.

GTEFL: No. Standards are not necessary. It is better to allow the parties to negotiate a mutually advantageous agreement than to impose standards. If, however, the Commission decides to establish standards, it should generally adopt the standards established by the FCC.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: No.

IAC: No position.

MCI: The opportunities for the development of competition through expanded interconnection will be best facilitated if the Commission adopts the same structure, standards, and conditions for physical and/or virtual collocation as adopted by the FCC in its order in CC Docket No. 91-141.

SOUTHERN BELL: Yes. Southern Bell proposes that central office space should be provided on a "first come, first served" basis and that all other FCC standards for interstate interconnection should be followed, with the exception that interconnection should not be allowed for non-fiber optic technology.

SPRINT: Yes, the Commission should mirror the FCC's policy on physical collocation, with one exception: Virtual collocation should be required when physical space becomes exhausted.

TELEPORT: The interconnection standard must provide AAVs with the same capability to connect its high capacity fiber optic network to the LEC's services in a manner which is technically, operationally and economically comparable to the way that the LEC connects its own high capacity facilities to the LEC network.

TIME WARNER: 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.

UNITED: Yes. The Florida Commission should require standards for collocation which are the same as those imposed by the FCC, except for mandatory physical collocation.

OPC: No position.

STAFF ANALYSIS: When introducing a new service, technology or procedure, oftentimes it is advantageous to establish a set of standards to help facilitate implementation by defining up front, the rights and obligations of all the parties involved. This issue is designed to answer whether this Commission should require standards for physical and/or virtual collocation, and if so, what they should be.

Indiantown, Northeast, Quincy, Southland and GTEFL are the only parties that do not believe standards should be required for physical or virtual collocation. GTEFL adds that the parties should be allowed to negotiate an agreement rather than have standards imposed on them. GTEFL witness Beauvais contends that it is not necessary for the Commission to require interconnection standards because "it is clearly possible for two parties to reach a mutually advantageous agreement between themselves." He does attest that if standards are to be required that the Commission "establish only minimum technical standards to be agreed to by the parties" and that these minimum technical standards should "be equivalent to what the LEC currently offers on its own services." Beauvais asserts that "certainly nothing higher should be required, nor should more stringent standards be precluded." (EXH 10, p.2) Staff believes that if interconnection standards are left to negotiations between the LEC and the interconnecting party that there will be a risk of inconsistency across the LECs within Florida due to varying network standards across the individual LEC. This could force inefficiencies into the interconnectors networks when dealing with more than one LEC.

ATT-C, Centel/United, FCTA, ICI, MCI, Southern Bell, Sprint, Teleport, and Time Warner all state that the Commission should require standards for expanded interconnection. (Poag EXH 30, p. 1, Canis TR 613, Denton TR 395-396, Rock TR 448, Kouroupas TR 260) The FCC required standards in order to clarify the rights and obligations of the LEC and interconnectors and also to reduce the number of disputes during the implementation process. (Report and Order, Released 10/19/1992, para 72) Staff agrees with the FCC's philosophy and with those parties that believe interconnection standards should be required. We believe that a set of standards can help facilitate implementation by defining up front, certain minimum rights and obligations of all the parties involved. Therefore, we recommend that this Commission adopt certain standards for physical and/or virtual collocation.

ALLTEL, FIXCA, IAC and OPC did not take a position on this issue.

ATT-C, Centel/United, MCI, Southern Bell and Sprint all state that the Commission should adopt the standards set forth by the FCC. (Poag EXH 30, p. 1, Denton TR 395-396, Rock TR 448)

The following is a list of the standards ordered by the FCC.

a) Central office space should be offered on a first-come, first-served basis. When space for physical collocation is exhausted, LECs should be required to provide virtual collocation. (Report and Order, Released 10/19/1992, para 77) This standard is further addressed in Issue 13.

b) The LECs are required "to specify an interconnection point or points as close as reasonably possible to the central office ... these interconnection points must be physically accessible to both the LEC and interconnectors on non-discriminatory terms." Under virtual collocation, the interconnection point would constitute the demarcation between the interconnector and LEC facilities. For physical collocation, this would constitute the entry point for interconnector cable in which the LEC would be compensated for the conduit and other facilities utilized by the interconnector. (Report and Order, Released 10/19/1992, para 84)

c) In an effort to ensure that the interconnectors can obtain redundancy the FCC ordered that the LECs be required to "provide at least two separate points of entry to a central office whenever there are at least two entry points for LEC cable." (Report and Order, Released 10/19/1992, para 89)

d) The FCC only allowed interconnectors to place certain types of equipment in the central office by specifying "expanded interconnection requirements should apply only to central office equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers." (Report and Order, Released 10/19/1992, para 93) They did not order collocation of enhanced service provider (ESP) equipment stating: "under virtual collocation, allowing collocation of ESP equipment could require a LEC to install maintain and repair a great variety of equipment unfamiliar to its technicians. The burdens associated with installation, maintenance, and repair

of interconnector-designated transmission equipment should not be unreasonable or overly burdensome for the LECs. " (Report and Order, Released 10/19/1992, para 94)

e) Interconnection of fiber optic facilities and microwave transmission systems were allowed. They did not order expanded interconnection of non-fiber optic facilities but believe that it should be permitted only upon FCC approval after a showing that such interconnection would serve the public interest. (Report and Order, Released 10/19/1992, para 98 & 99) This standard is further addressed in Issue 14.

f) The FCC also ordered the LECS to provide expanded interconnection at serving wire centers, end offices, remote distribution nodes and any other points that the LECs treat as a rating point -- "a point used in calculating the length of interoffice special access links." They assert that these offices are designed as points that provide aggregated access to end user premises and IXC POPs. Tandem offices were specifically excluded from special access interconnection but will be addressed under switched transport interconnection. (FCC Report & Order, Released 10/19/92, para 103) This standard was addressed in Issue 8.

Although Southern Bell proposes adopting the FCC standards, it does not believe that interconnection should be allowed for non-fiber optic technology. The only non-fiber optic technology required by the FCC is microwave transmission equipment. Other non-fiber optic technologies are subject to approval by the FCC upon a public interest determination. This standard is addressed in Issue 14.

FCTA, Teleport and Time Warner all state that the Commission should require an interconnection standard that is technically, operationally and economically comparable to the way the LEC connects with its own facilities. (Kouroupas TR 260) Witness Kouroupas considers the following to be the standard that should apply to competitive interconnection: the interconnection arrangement must provide Teleport with "the same capability to connect its high capacity fiber optic network to the LECs central office facilities and the LECs ubiquitous low capacity loop network in a manner which is technically, operationally and economically comparable to the way that the LEC connects to its

own high capacity facilities to the LEC central office facilities and loop network." (TR 260) Kouroupas testifies that the FCC standard for virtual collocation is inadequate because the LEC will install, maintain and repair equipment to meet LEC standards not interconnector standards. (TR 261) ICI also makes a distinction between standards for physical and virtual collocation. Witness Canis believes that the Commission should establish a standard for physical collocation that is technically equivalent to that followed by the LECs for their own networks. Virtual collocation should have certain minimal standards to protect against LEC abuse. He proposes the following virtual collocation standards for "those rare instances where physical collocation is not possible.": (Canis EXH 3, p. 15-16, TR 613)

> Report provisioning and maintenance intervals for both LEC and collocator equipment to ensure against discrimination.
>
> Justify any overtime charges to prevent collocators from bearing any unwarranted costs.
>
> Allow collocators to provide all collocated equipment at their cost and disallow any LEC markups.
>
> Allow collocators to retain title to the collocated equipment and to have it removed from the collocation arrangement upon request and payment of removal costs.
>
> Require LECs to tariff and support all rate elements; to prevent discrimination, do not allow individual case basis charges.
>
> Establish strict guidelines to prevent imposition of unreasonable training costs (e.g., prohibit LECs from requiring collocators to pay for LEC personnel training in SONET or ATM technology, which ultimately will benefit LECs)
>
> Provide for expedited consideration of any collocator complaints arising out of virtual collocation arrangements. (TR 613-614)

Witness Canis does believe however, that collocators and LECs should remain free to negotiate different arrangements provided all relevant rates and information is disclosed in LEC tariffs and offered on a nondiscriminatory basis. (TR 613-614) Staff believes that these concerns such as report provisioning,

installation and maintenance intervals, overtime charges, equipment considerations, rate element support and training cost guidelines are all tariffing considerations and should be a part of the tariffing process. Witness Canis also proposes an expedited complaint process for virtual collocation arrangements. We assert that Chapter 364.338(7) F.S. already provides for an expedited process for disposing of complaints received by this Commission. Therefore, staff believes the Commission already has an appropriate statutory requirement in place.

As stated above, FCTA, Teleport and Time Warner all assert that the Commission should require an interconnection standard that is technically, operationally and economically comparable to the way the LEC connects with its own facilities. Staff believes that the development of interconnection standards will be an evolving process, over time, as experience is gained within the Florida's telecommunications industry. We also believe that the standards set forth by the FCC will serve as an initial step towards interconnection standards that are technically, operationally and economically comparable to the way the LEC connects with its own facilities. Therefore staff is recommending that in addition to the standards discussed in Issues 8, 13 & 14, the Commission should adopt the following as standards:

1) LECs are to specify an interconnection point or points as close as reasonably possible to the central office. These interconnection points must be physically accessible to both the LEC and interconnectors on non-discriminatory terms. Under virtual collocation, the interconnection point would constitute the demarcation between the interconnector and LEC facilities. For physical collocation, this would constitute the entry point for interconnector cable in which the LEC would be compensated for the conduit and other facilities utilized by the interconnector.

2) LECs are required to provide at least two separate points of entry to a central office whenever there are at least two entry points for LEC cable.

3) Expanded interconnection requirements should apply only to central office equipment needed to terminate basic transmission facilities, including optical terminating equipment and multiplexers.

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

RECOMMENDATION: No. The Commission should not impose such a requirement. Instead, the Commission should encourage the collocators to allow LECs and other parties to interconnect with their networks.

POSITIONS OF PARTIES

INTERMEDIA: Yes. Intermedia is willing to provide reciprocal interconnection arrangements for LECs or other parties, upon similar terms and conditions as those established by the LECs.

ALLTEL: No position.

ATT-C: No. The purpose of expanded interconnection is to facilitate the entry of potential competitors into the monopoly preserves of the LECs. Since none of those potential competitors possess a monopoly, interconnection requirements are not necessary, and, in fact, would tend to frustrate rather than encourage the development of competition.

CENTEL: Centel adopts the position of United on this issue.

FCTA: 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.

FIXCA: No position.

GTEFL: Yes. In order to achieve maximum competitive benefits and ensure development of the most innovative telecommunications infrastructure possible, interconnection should be made available with all types of networks.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: Yes, if collocation is required for the small companies, then reciprocity is desirable.

IAC: No position.

MCI: No.

SOUTHERN BELL: Yes. Reciprocity should be part of any interconnection/collocation ordered by this Commission.

SPRINT: Yes, interconnectors should be required to offer interconnection at its point of collocation.

TELEPORT: No. The Commission must require LECs, as monopoly providers of essential bottleneck facilities, to provide physical collocation to interconnectors. However, non-dominant competitive carriers need no such requirement.

TIME WARNER: No.

UNITED: Yes. The same rules and requirements should be applied to all potential interconnectors. It is essential that consumers have full accessibility to the telecommunications network, regardless of the provider. All interconnectors should be willing to offer access to their networks on terms and conditions that are similar for similar types of customers.

OPC: Yes.

STAFF ANALYSIS: This issue addresses whether or not collocators should be required to offer interconnection to the LECs or other parties.

Indiantown, Northeast, Quincy and Southland believe that if non-Tier 1 LECs are required to provide expanded interconnection then the same requirement should be mandated for the interconnectors.

Alltel, FIXCA and IAC chose not to take a position on this issue.

ICI, Centel/United, GTEFL, Southern Bell, Sprint and OPC all believe that collocators should be required to offer interconnection to LECs and other parties.

ICI's witness Canis testifies that "Intermedia is willing to provide reciprocal interconnection arrangements for LECs and other parties, upon similar terms and conditions as those established by the LECs." (TR 52) However, he asserts that the intention of this statement is not to have the Commission require collocators to provide interconnection, but that ICI is willing to consider collocation requests from LECs and other parties. (TR 114)

The LECs and Sprint favor a reciprocal interconnection requirement. (Poag EXH p. 83-84, Beauvais TR 318, Denton TR 397, Rock TR 448) GTEFL asserts that it is necessary to foster

competition in the marketplace and that everyone should be subject to the same rules and requirements. Witness Beauvais asserts that such a requirement would be consistent with "symmetrical treatment of all parties in the marketplace." He later states "if the AAVs truly have a better mousetrap to offer to the marketplace than do the LECs, then there should be no reason it should be denied to any entity in the marketplace." (TR 318) Denton echoes this by stating that reciprocity should be a part of any interconnection arrangement in Florida, and that the benefits of increased competition should be available to all telecommunications providers. (TR 397)

ATT-C, MCI, Teleport, Time Warner and FCTA all say that reciprocity should not be a requirement. ATT-C witness Guedel does not believe that collocators should be ordered to allow LECs to interconnect with their networks. He testifies that expanded interconnection was designed by the FCC to initiate competition in a traditional monopoly environment. He elaborates that "because of the existence of the monopoly maintained by the local exchange companies that such a requirement is being placed on them." (Guedel TR 200, 209, FCC Report & Order, Released 10/19/92, para 1&2) In addition, the collocator does not possess a monopoly at this time nor does Guedel see this happening in the future. Therefore, such requirements should not be placed on the interconnector. (TR 200, 209) Teleport's witness Kouroupas concurs with Guedel's position, but adds that "as competition for private line services develops, a competitor would be foolish to reject a collocation request and the associated revenues." His reasoning is that the potential interconnector would simply move on to the next provider. (TR 262) Staff agrees that AAVs do not have as much freedom to discriminate among customers as would a dominant carrier such as a LEC. We believe AAVs would have an incentive to explore additional revenue streams to help fund their network goals and advance their company in the market.

Staff believes that in principle, symmetrical treatment would be appropriate in a more mature environment. However, we do not believe mandated symmetrical treatment is appropriate at this time because the market itself is not symmetrical. The LECs are currently the dominant provider of local access services and the owner of the bottleneck facilities. Therefore, staff does not believe it is necessary at this time to mandate that collocators permit LECs and other parties to interconnect with their networks. Instead, we recommend that the Commission encourage collocators to allow LECs and other parties to interconnect with their networks.

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

RECOMMENDATION:

ALLOCATION OF SPACE:

Staff recommends that central office space should be allocated to interconnectors on a first-come, first-served basis, and when central office space is exhausted, the LEC should be required to offer virtual collocation.

SPACE AVAILABILITY:

Staff recommends that if the LECs file for exemptions from physical collocation for central offices in Florida, then they must provide the same type of information to this Commission as was provided to the FCC in order for a decision to be made. The Commission should use the information provided and if additional information is needed or if the Commission believes an independent verification is necessary, then it could be ordered. If the Commission grants an exemption for physical collocation, staff recommends that the LEC be required to offer virtual collocation.

INCREMENTS OF SPACE ALLOTTED TO COLLOCATORS:

Staff recommends that LECs should distribute floor space to collocators in increments of 100 square feet, but if mutually agreeable by both parties, then smaller or larger increments of floor space can be provided.

WAREHOUSING OF CENTRAL OFFICE SPACE:

Staff recommends that LECs be allowed to place restrictions on warehousing in their tariffs such as a reasonable time period during which an interconnector has to begin to use its space. Staff believes that a time period for an interconnector to begin to use the space should be at least 60 days, but LECs would be free to establish longer time periods than 60 days. Further, the interconnector should have to forfeit its collocation application fee if it does not use the space within the allotted time period specified in the tariff.

EXPANSION OF A COLLOCATOR'S EXISTING SPACE:

Staff recommends that the LECs should provide a "checker board" type of arrangement for physical and virtual collocation, if sufficient space is available. A "checker board" type arrangement for physical collocation is one with every other square occupied by an interconnector's collocation cage. For virtual collocation, a space in the equipment rack would be left vacant between each collocator. If there is not sufficient space to implement such a policy in certain central offices, the LECs should request exemption for these central offices at the same time and in the same manner as it would request an exemption from offering physical collocation in central offices. As space becomes exhausted in the central office, the LEC may begin to place new interconnectors in the in-between spaces.

POSITIONS OF PARTIES:

INTERMEDIA: The provisioning standard should be first come first served. The standard for denying space on the basis of unavailability should be one of reasonableness, with the burden on the LEC to justify the denial of physical collocation.

ALLTEL: No position.

ATT-C: Space should be allocated on a first come first served basis in a manner consistent with the FCC's ruling in CC Docket 91-141.

CENTEL: Centel adopts the position of United on this issue.

FCTA: 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.

FIXCA: No position.

GTEFL: Ideally, the market should be allowed to operate, thus obviating the need for any space allocation standards. In practical terms, however, it is probably impossible for this Commission to establish space allocation standards that deviate from the FCC's first-come, first-served allocation scheme.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: None.

IAC: No position.

MCI: The opportunities for the development of competition through expanded interconnection will be best facilitated if the Commission adopts the same structure, standards, and conditions as adopted by the FCC in its order in CC Docket No. 91-141.

SOUTHERN BELL: Central office space for collocation should be allocated on a "first-come, first-served" basis. The space for both physical and virtual collocation should be allocated in a manner that is consistent with the standards set for interstate expanded interconnection service.

SPRINT: Physical collocation should be required on a first-come first-served basis. If central office space is exhausted, the LEC should be required to offer a virtual arrangement equitable to physical.

TELEPORT: TCG agrees with the FCC's method of requiring LECs to provide space for physical collocation on a first come, first served basis.

TIME WARNER: The Commission should establish standards for the following: space allocation; point of interconnection; points of entry into the central offices; equipment placed in central offices by or for interconnectors; interconnection of non-fiber technologies; and LEC offices at which interconnection is available.

UNITED: The LECs should not be required to reserve or allocate space. In those central offices where interconnectors want space, it should be furnished, if available, on a first-come, first-served basis.

OPC: No position.

STAFF ANALYSIS:

INTRODUCTION

Staff believes that this issue should only deal with the standards for space in central offices, such as allocation of space, increments of space allotted, availability of space, warehousing of space, and expansion of space. Some parties discussed other standards such as points of interconnection, points of entry into the central offices, equipment types,

interconnection of non-fiber, or which central offices should offer interconnection. Although some parties did discuss these other standards in the context of this issue, they were or will be discussed in other issues.

The standards which determine which central offices should offer interconnection were discussed in **issue 8**. The standards for points of interconnection, points of entry into the central office, and equipment placed in the central office have already been discussed in **issue 11**. The standards for the interconnection of non-fiber technology will be discussed in **issue 14**.

ALLOCATION OF SPACE

All of the parties to this docket either advocated the first-come, first-served standard for allocation of space or took no position on the issue. (Canis TR 119, Poag TR 581, Denton TR 395, Guedel TR 218, Kouroupas TR 262, Rock TR 449, Beauvais TR 328) No party advocated an allocation method for central office space other than first-come, first-served. In addition, most of the parties in the FCC proceeding were also in favor of the first-come, first-served standard. (FCC Order, Released 10/19/92, para 74) In this proceeding, all but five of the parties (these five took no position) agree that mirroring the FCC's first-come, first-served standard would be the best action for the FPSC to take.

The FCC established standards for space allocation in the event that there is insufficient space in a central office to accommodate all prospective interconnectors. It concluded that LECs should be required to offer space for physical collocation on a first-come, first-served basis. In addition, when space in a central office becomes exhausted, the FCC ordered LECs to provide virtual collocation. Since the FCC is requiring LECs to offer virtual collocation if space is exhausted (meaning an interconnector could get access one way or the other), then a standard of first-come, first-served seemed more equitable than giving preference to carriers. (FCC Order, Released 10/19/92, para 73-80)

GTEFL believes that a market-based allocation would be the best standard, but as a practical matter, the standards set by the FCC should be mirrored in Florida. (Beauvais TR 328) GTEFL also says that most of the traffic over the collocated facilities will be mixed intrastate and interstate, and there is currently no way to verify the nature of the traffic. Under these

circumstances, it would be extremely difficult to maintain different space allocation standards for the state and federal purposes. (Beauvais TR 357-358)

Southern Bell also believes that the first-come, first-served method of allocation that the FCC ordered is the most workable method because the FCC concluded this after noting that most of the parties agreed it was the best method. (Denton TR 395-396, FCC Order, Released 10/19/92, para 74) Intermedia also advocates the first-come, first-served standard for allocation of space. (Canis TR 119)

Staff Conclusion

Staff believes that the first-come, first-served method of allocation of central office space would be the best for two main reasons. First, since most of the traffic over the collocated facilities will be mixed intrastate and interstate, there is currently no way to verify the nature of the traffic. (Beauvais TR 357-358) Second, all of the parties in this proceeding either advocate first-come, first-served or take no position. For those reasons it does not make sense to have different standards for allocation of space than the FCC.

Therefore, staff recommends that central office space for physical collocation should be allocated to interconnectors on a first-come, first-served basis, and when central office space is exhausted, the LEC should be required to offer virtual collocation.

SPACE AVAILABILITY

As discussed above, staff believes that when central office space is exhausted and there is no room for physical collocation, the LEC should be required to offer virtual collocation. This part of the issue discusses the parties' positions on space availability.

Intermedia's witness Canis states that the FCC mandated physical collocation with the exception of two instances: (1) a voluntarily negotiated arrangement for virtual, and (2) if the LEC demonstrated, to the FCC, that a central office lacked space for physical. (TR 137-138) He also believes that the FPSC should require LECs to provide virtual collocation after the Commission determines that space is exhausted. (Canis TR 59) Most parties agree on this standard; however, not all parties agree on how to determine if the central office actually lacks space.

Intermedia believes that the Commission should adopt a reasonable standard for LECs for denying space for physical collocation when space is unavailable. (Canis TR 119-120) Intermedia believes that this standard should take into account total central office space, the amount of space not currently used for provision of service, and the amount of space that is reserved by the LEC for future service over the next three years. In addition, Intermedia believes that the burden to demonstrate that there is a lack of space should fall on the LECs. (Canis TR 120; Canis TR 607)

All of the above standards are about the same as what the FCC ordered on the interstate level. The FCC required the LECs to file petitions for the central offices that lacked space to provide physical collocation. Some of the parties to that proceeding, mainly the interconnectors, believed that the LECs did not make adequate factual showings to justify exemption of these central offices, but the FCC did not agree.

In most of the cases, the LECs submitted charts to the FCC listing the central offices that they wanted exempted based on lack of space, the area in square feet in each of the offices, and the amount of area currently occupied by the LEC or reserved for future use. In addition, numerous affidavits of employees who examined the central offices were also submitted. Therefore, the FCC concluded that the LECs provided adequate descriptions of the methods they used to determine which central offices lacked space. (FCC Order, Released 6/9/93, para 7) The FCC also ordered that LECs should not be required to expand their facilities in order to make room for collocators. (FCC Order, Released 10/19/92, para 79)

Further, the FCC concluded that the LECs should not have to submit photographs or blueprints of offices for which they want exemptions, except in a specific case in the future where photographs or blueprints might provide information to help resolve a dispute raised by an interconnector at a particular central office. (FCC Order, Released 6/9/93, para 8)

Teleport believes that space will become less of a concern in the future as the equipment becomes smaller and central office space becomes available. (Kouroupas TR 263)

Intermedia believes that the Florida Commission should go further than the FCC by requiring some form of independent verification of space in central offices that the LEC claims to be exhausted. (Canis TR 120-121) The independent verification

could be done by an AAV representative, a member of the Commission staff, or an independent outside contractor. Intermedia fears that the LECs may not be telling the entire truth about space availability. (TR 121) Time Warner believes that when there is no longer space for physical collocation, as verified by the Commission, the LECs should offer virtual collocation.

GTEFL believes that parties should be free to negotiate their own interconnection contracts, but if this Commission decides to establish standards, then it should mirror what the FCC ordered. (Beauvais TR 327-328)

GTEFL argues strongly against requiring independent verification of central office space in its post hearing brief, stating that it would be "wasteful and unnecessary". GTEFL states that the information and affidavits that Intermedia recommends were, for the most part, already filed with the FCC. GTEFL believes that producing the same information to the Commission and duplicating the FCC's efforts does not make sense. It believes that interconnectors would always dispute that there is space, and force the Commission to resolve the dispute. However, GTEFL does not argue for or against this anywhere in the record of this docket.

Southern Bell and United/Centel do not specifically discuss space availability, but generally they argue that it would be best to mirror the FCC on the space issue. (Denton TR 410, EX 30, p.6-7)

Staff Conclusion

The only serious dispute among the parties regarding space availability appears to be whether independent verification is necessary. Intermedia argues strongly for some type of independent verification. GTEFL states that it would not be necessary. Staff believes that the LECs should file the same type of information that was filed with the FCC. This information includes charts specifically listing the central offices that the LECs seek exemption, the area in square feet in each of these offices, and the amount of area currently occupied by LEC equipment or reserved for future use. In addition, LECs could provide affidavits of employees who have examined the central offices. (FCC Order, Released 6/9/93, para 7) However, if there is a dispute regarding the accuracy of the information by the parties or if the Commission believes it needs further information to determine the availability of space, then staff

believes that independent verification would be necessary and beneficial.

Thus, staff recommends that if the LECs file for exemptions from physical collocation for central offices in Florida, then they should provide the same type of information to this Commission as was provided to the FCC in order for a decision to be made. The Commission should use the information provided and if additional information is needed or if the Commission believes an independent verification is necessary, then it could be ordered. If the Commission grants an exemption for physical collocation, then the LEC should be required to offer virtual collocation under the rates, terms, and conditions discussed in issue 16.

INCREMENTS OF SPACE ALLOTTED TO COLLOCATORS

Several of the LECs do not limit allocation of space to increments of 100 square feet. United does not limit its allocation of space to 100 square feet in its interstate tariffs. (Poag TR 580) Centel, in its interstate tariff, also allows increments of space less than 100 square feet, if mutually agreeable to both parties. (EX 36, p.29) GTEFL does not specifically state in its interstate tariff that an interconnector must purchase floor space in 100 square feet increments.

On the other hand, GTEFL states that its policy is to allot space in 100 square feet increments. Witness Beauvais testified that if an interconnector needed 110 square feet then it would have to purchase 200 square feet. He related it to a situation where a person might want "a two-bedroom apartment with two baths, an extra den, but it doesn't come that way. You have to draw the line somewhere." (EX 14, p. 51)

Since Southern Bell only allows 100 square feet increments in its interstate tariff, it believes that allowing less or more space would not make sense because to try to separate interstate and intrastate would be too difficult. (Denton TR 419; EX 19, p. 140) Witness Beauvais states that "it would create ridiculous administrative problems. (TR 419)

Witness Denton stated in his testimony that the 100 square feet standard came from New York Telephone's collocation experience. Since it was one of the first cases of physical collocation and it seemed to fit with the general requirements, that was the standard that has been used. (TR 417)

Intermedia's witness Canis also testifies that the 100 square feet came from New York Telephone negotiations and that they arbitrarily came up with that amount. (TR 133) This however does not mean that Intermedia is in favor of the 100 square feet because it is possible that through negotiations a collocator would be willing to accept a smaller amount. (Canis TR 63)

ATT-C believes that the FCC came up with the 100 square feet because they had to have something if the parties could not negotiate an amount. (Guedel TR 223)

Staff Conclusion

Staff believes that the 100 square foot increments for distribution of floor space was just an arbitrary standard adopted by the FCC. (Canis TR 133) Nevertheless, staff believes that the Commission should adopt a standard of 100 square feet increments, except where different size increments are mutually agreeable between the parties because it would give LECs and interconnectors flexibility. Since this was the standard adopted at the interstate level, it seems reasonable from an administrative perspective to use the same standard at the intrastate level. Furthermore, most of the LECs in Florida currently allow different size increments in their interstate tariffs, where mutually agreeable. (Poag TR 580, EX 36, p.29)

Therefore, staff recommends that LECs should distribute floor space to collocators in increments of 100 square feet, but if mutually agreeable to both parties, then smaller or larger increments of floor space could be provided to collocators.

WAREHOUSING OF CENTRAL OFFICE SPACE

Most parties to this docket also agree that some type of restriction on warehousing of space should be implemented. This would keep collocators from purchasing all of the space in certain central offices so that it may keep others from collocating. The FCC in its order "permits LECs to include in their tariffs reasonable restrictions on warehousing of unused space by interconnectors." (FCC Order, Released 10/19/92, para 80)

United/Centel would require that an interconnector should begin to use the collocated space within six months of the date of application, or another time period agreed upon by the collocator and the LEC, or the space must be given back to the LEC. United/Centel states that if this were to occur then the

application fee, less administrative and engineering costs incurred by United to process the application, would be refunded. (EX 30, p.9)

Southern Bell has a somewhat different view than United. It believes that if the LEC needs the space for its own use, the collocator must begin to use the space within 30 days of receipt of notification by the LEC, or return the space to the LEC. (EX 18, p.14)

Teleport does not believe the LEC should be able to place restrictions on the ordering of central office space. It believes that because interconnectors must compete in the market for services, they have no economic incentive to warehouse space, since they would be paying for space they would not need. They also believe that allowing restrictions on the amounts of space an interconnector can order would allow the LECs to stop the expansion of the collocator's network by refusing to provide new space. (EX 8, p.6)

Intermedia does not object to "reasonable" restrictions on warehousing of space because it ensures the responsible use of central office space. Intermedia also states that some AAVs have argued that some of the standards implemented by LECs on the interstate level are unreasonable, and the FCC is currently investigating these standards. (EX 3, p.9)

GTEFL believes that as long as the LEC has the right to require an interconnector to relinquish unused space, within a reasonable time, warehousing provisions are not necessary. (EX 10, p.11) Sprint agrees, stating that if the collocator does not use the space within a reasonable period of time, then it should have to forfeit the space as well as any charge incurred to date. (EX 24, p.5)

Staff Conclusion

Staff agrees with witness Kouroupas when he states that warehousing should not be a problem because "economically it would not be smart to pay for space that is not needed." (EX 8, p.6) However, staff believes even if warehousing does not make economic sense, that as a safety measure, restrictions should be imposed. Staff believes that these restrictions would make it less likely for interconnectors to buy a lot of the space in a central office and then not use it. In the extreme, this would deter one AAV from purchasing all physical space and forcing other AAVs to settle for virtual collocation. Staff believes

that a time period of at least 60 days for the collocator to use the space is necessary so that LECs could not take back the space after a week or two. This time period also benefits the LEC because if the collocator does not begin to use the space within the 60 day time frame, the LEC can reclaim the space.

Staff recommends that LECs be allowed to place restrictions on warehousing in their tariffs such as a reasonable time period during which an interconnector has to begin to use its space. Staff believes that a time period for an interconnector to begin to use the space should be at least 60 days, but LECs would be free to establish longer time periods than 60 days. Further, the interconnector should have to forfeit its space and its collocation application fee if it does not use the space within the allotted time period specified in the tariff. No party discusses what constitutes "use". Thus, staff recommends that if there is a dispute over when a collocator began to use its space, the Commission should settle the dispute. Staff will discuss the specific restrictions that should be included in the LECs intrastate tariffs in issue 16.

EXPANSION OF A COLLOCATOR'S EXISTING SPACE

Intermedia argues for a standard that would allow efficient and effective expansion of an interconnector's facilities. (Canis TR 121) It believes that there are many ways to accomplish this without being burdensome to the LECs. Intermedia states that one way would be to have a "checker board" type arrangement in the central offices, with every other square occupied by an interconnector's collocation cage. This would allow an interconnector to expand to an area directly adjacent to its existing space, instead of across the room, or to another floor. Intermedia states that this policy is being used today in Massachusetts by New England Telephone. (Ex. 4, p.28-30, Canis TR 122-123) Such an approach minimizes the cost of additional cabling and repeaters that would be necessary if the two spaces were far apart or even on different floors. (Canis TR 122-123)

Intermedia states that this type of policy would only be provided if there was enough space to accomplish it. If the collocation demand was great enough or if there is not adequate space to implement the "checker board" arrangement in the central office, then the LECs could build collocation cages in the in-between spaces as new collocators made requests. (Canis TR 122)

Intermedia also requests that the same type of policy for expansion should be adopted for virtual collocation. Witness

Canis states that in the equipment rack, spaces should be left between the equipment of each collocator so that it may expand to a rack directly adjacent to its existing equipment. The reason for this is the same as for physical collocation. The interconnector should not have to pay for the LEC to run 120 feet of cable across the room to the new equipment when it could be right next to the existing equipment. (Canis TR 123)

Staff Conclusion

Intermedia is the only party that discusses the expansion of existing space. Even so, staff agrees with Intermedia that some type of policy to ensure efficient and effective expansion needs to be implemented. Therefore, staff recommends that the LECs should provide a "checker board" type of arrangement for physical and virtual collocation, if sufficient space is available. If there is not sufficient space to implement such a policy in certain central offices, the LECs should request exemption for these central offices that they are unable to provide the "checker board" type of arrangement at the same time and in the same manner as it would request an exemption from offering physical collocation in central offices. As space becomes exhausted in the central office, the LEC should begin to place new interconnectors in the in-between spaces.

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

RECOMMENDATION: Yes. The Commission should allow expanded interconnection of non-fiber optic technology on a central office basis where facilities permit. We further recommend that the actual location of microwave technology not be mandated but be negotiated between the parties.

POSITIONS OF PARTIES

INTERMEDIA: No position.

ALLTEL: No position.

ATT-C: ATT-C takes no position.

CENTEL: Centel adopts the position of United on this issue.

FCTA: LECs should be required to make expanded interconnection available to fiber technologies as well as non-fiber technologies such as microwave facilities.

FIXCA: No position.

GTEFL: No. To avoid rapid exhaustion of central office space, interconnection should generally be limited to fiber facilities.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: No.

IAC: No position.

MCI: No position.

SOUTHERN BELL: No. The interconnection of non-fiber optic cable would require too much space and it would be incompatible with technological development.

SPRINT: Expanded interconnection for non-fiber technologies should be limited to microwave transmission only.

TELEPORT: TCG has no position on this issue.

TIME WARNER: Yes. LECs should be required to make expanded interconnection available to fiber technologies as well as non-fiber technologies such as microwave facilities. In the case of

microwave technologies, LECs should be required to make expanded interconnection available via rooftop antennas.

UNITED: Although the Commission should not require expanded interconnection for non-fiber optic facilities, United Telephone should be allowed the option to offer expanded interconnection to non-fiber technology if it so chooses.

OPC: Technology should not be the determining factor in the decision by this Commission to require physical collocation and/or virtual collocation.

STAFF ANALYSIS: This issue asks if the Commission should allow expanded interconnection for non-fiber optic technology. Non-fiber optic technology includes, but is not limited to, copper cable, coaxial cable and microwave technologies.

The LECs as a whole, with the exception of ALLTEL (who did not take a position), believe that only fiber optic technology should be utilized by the collocators for the purposes of expanded interconnection. (Beauvais TR 316, Denton TR 398, Poag TR 496)

FCTA and Time Warner state that expanded interconnection should be made available using both fiber and non-fiber optic technology. Sprint varies from this position in that they believe that expanded interconnection for non-fiber optic technology should be limited to microwave equipment. (TR 449)

OPC took the position that when deciding whether to require physical and/or virtual collocation that technology should not be a determining factor.

ICI, ALLTEL, ATT-C, FIXCA, IAC, MCI and Teleport did not take a position on this issue.

Although ATT-C chose not to take a position on this issue, witness Guedel states that fiber is the desired choice and that the Commission should move along the same guidelines as the FCC. (TR 214) The FCC required "expanded interconnection of both fiber optic and, where reasonably feasible, microwave transmission facilities." They concluded that microwave interconnection will expand choices generally for customers and could provide needed alternative routing in the event of certain types of LEC network outages. (FCC Report & Order, Released 10/19/92, para 98) The FCC's requirement did not include such non-fiber optic technologies as copper and coaxial cable because

of "the potential adverse affects of such interconnection on the availability of conduit and riser space." However, it did allow the possibility of non-fiber cable interconnection by stating that it would be permitted "only upon Commission approval of a showing that such interconnection would serve the public interest in a particular case." (FCC Report & Order, Released 10/19/92, para 99)

GTEFL witness Beauvais testifies that the technology involved in expanded interconnection should be irrelevant. He adds that from a practical standpoint, constraints may result in vault space and entrance facilities from the use of the larger traditional cable facilities as opposed to fiber facilities. He offers that the final decision for the usage of non-fiber optic facilities should be "deferred to the owner of the property rights -- the LEC." (Beauvais TR 316, Denton TR 398) Southern Bell witness Denton added that the telecommunications network is moving towards a fiber optic based network and that expanded interconnection offerings should be compatible with these technology developments. (TR 398, 421) Staff acknowledges that copper facilities do have larger space requirements than fiber. We also agree that the LECs are installing a greater degree of fiber optic facilities in their networks. However, given the diversity of central office designs and serving areas, staff believes that the ability to facilitate non-fiber optic technology should be approached on a central office-specific basis.

Sprint's witness Rock asserts that expanded interconnection for non-fiber optic technology should be limited to microwave equipment. (TR 449) As mentioned earlier, the FCC decided that microwave technology would provide the collocator with another option and may be used as a source of alternative routing in the event that a LEC network outage occurs. However, the FCC did recognize that there were additional issues to be resolved with microwave interconnection, such as the availability of rooftop space as well as necessary authorizations that might be required. Nevertheless, the FCC concluded that not allowing the use of microwave technology would "unnecessarily limit interconnection." (FCC Report & Order, Released 10/19/92, para 98)

Two of the LEC witness commented that they would accept allowing expanded interconnection for microwave technology but did not believe it should be required. (Denton TR 423, Poag EXH 31 p. 80) GTEFL believes that this should be a negotiated agreement with the LEC making the final decision. (TR 316) Witness Denton added that microwave is a passing technology and

that it did not fit in with the expanded interconnection model. He believes expanded interconnection is designed to promote new technology. (TR 422) Staff believes that expanded interconnection of microwave technology has merits as an alternative transport medium. To the extent that a collocator requests interconnection of microwave equipment, staff believes it should be allowed. However, staff does not believe that there is sufficient information in the record to make a determination as to where microwave facilities should be installed. Therefore, we conclude that the actual location of the microwave equipment be an arrangement between the parties to be negotiated on a central office basis.

Staff believes the Commission should neither require or prohibit expanded interconnection of non-fiber optic technology. Interconnection arrangements for non-fiber technology should be approached on a case-by-case basis and any disputes should be filed with the Commission either in the form of a petition or a complaint. However, the actual location of microwave equipment used for interconnection should be a negotiated agreement between the parties. Therefore, staff is recommending that the Commission allow expanded interconnection of non-fiber optic technology on a central office basis where facilities permit. We further recommend that the actual location of microwave technology be negotiated between the parties.

ISSUE 15: If the Commission permits expanded interconnection, what pricing flexibility should the LECs be granted for special access and private line services? **[YATES]**

PRIMARY RECOMMENDATION : The LECs should be granted "zone-pricing" flexibility on a conceptual basis under the guidelines established by the FCC in Order No. 92-440, CC Docket No. 91-141. This arrangement allows for the establishment of three density pricing zones, requiring that rates be averaged within each zone but allowing that rates may differ between pricing zones. The LECs should be required to submit their Zone Density Pricing Plans and accompanying zone-pricing tariff proposals, with cost data to support rates that cover costs, within 60 days of the Order. The LECs should use their FCC-approved or pending interstate zone density plans and tariffs as a guide, with variations and justifications where appropriate, when submitting their intrastate filings. The LECs should also file concurrent results of their efforts or plans to streamline the Contract Service Arrangements process. Once approved by the Commission, the LECs should not be delayed in implementing their zone-pricing tariffs, consistent with the specified effective dates.

ALTERNATIVE RECOMMENDATION: No additional pricing flexibility should be granted. The LECs currently have pricing flexibility through Contract Service Arrangements (CSAs) and additional pricing flexibility is not warranted until the LECs can demonstrate that the CSAs are insufficient in the competitive market for special access and private line services. Additional pricing flexibility should also be denied until it can be addressed in conjunction with switched access interconnection, currently scheduled for hearing in August 1994 in Phase II of this docket.

POSITIONS OF PARTIES

INTERMEDIA: None. The Commission already has granted LECs substantial pricing flexibility -- allowing them to offer contract serving arrangements and individual case basis pricing, under which the LECs may price their services at nearly any level they desire, so long as they meet the LECs' long run incremental costs.

ALLTEL: No position.

ATT-C: ATT-C would not oppose granting the LECs "zone-pricing" flexibility under the same parameters established by the FCC in Order No. 92-440 entered in CC Docket No. 91-141.

CENTEL: Centel adopts the position of United on this issue.

FCTA: The LECs currently enjoy substantial pricing flexibility under current imposed restrictions. No further pricing flexibility is appropriate.

FIXCA: Expanded interconnection for special access and private line service, per se, does not justify granting the LECs any additional pricing flexibility. The Commission should separately consider, however, whether zone pricing based on identifiable cost differences in service is a reasonable pricing strategy for LEC-provided special access and private line services.

GTEFL: The current contract serving arrangement mechanism should be left in place. Zone pricing, allowing geographical deaveraging, should also be implemented. In the absence of sufficient pricing flexibility, the LEC will be foreclosed from meeting competitive challenges from interconnectors.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: If competition materializes in the rural areas of Indiantown, Northeast, Quincy and Southland, the companies need sufficient pricing flexibility to respond to competitive situations in a timely manner.

IAC: Expanded interconnection for special access and private line service per se, does not justify granting the LECs any additional pricing flexibility. The Commission should separately consider, however, whether zone pricing based on identifiable cost differences in service is a reasonable pricing strategy for LEC-provided special access and private line services.

MCI: No additional pricing flexibility is required.

SOUTHERN BELL: The LECs should retain the pricing flexibility they currently have for private line services. For intrastate special access services, Southern Bell should be permitted, at a minimum, to implement zone pricing on the basis of wire center groupings.

SPRINT: The Commission should adopt the FCC's policy on density zone pricing, with modification. LECs should be allowed to initiate zone pricing in study areas regardless of whether competitive entry has occurred. In addition, LECs should be permitted to offer different rates in each density zone.

TELEPORT: The presence of AAV competitors does not mean a fully

competitive market exists. The Commission should not grant pricing flexibility to the LECs until full and effective competition has developed.

TIME WARNER: LECs currently enjoy substantial pricing flexibility under current imposed price restrictions. Until additional competition for both switched and special access develops, no further pricing flexibility is appropriate.

UNITED/CENTEL: Because of the cross-elasticity between switched and special access services, pricing flexibility should not be limited to special access and private line services. In order to allow the Company to compete based on its economic costs, switched access reductions and pricing flexibility are necessary.

OPC: If allowed at all, downward pricing flexibility should only be granted for competitive services, such as DS-3. No price increases should be allowed as a result of this docket.

STAFF ANALYSIS FOR PRIMARY RECOMMENDATION: As noted in ATT-C's position, the FCC has granted the LECs a "zone-pricing" flexibility on the federal or interstate level. Several of the other parties - Central Telephone Company of Florida (Centel), GTE Florida, Incorporated (GTEFL), Indiantown, Northeast, Quincy, Southland, Southern Bell Telephone and Telegraph Company (SBT), Sprint Communications Company Limited Partnership (Sprint) and United Telephone Company of Florida (United) - also recognize the FCC's decision and take positions in support of zone pricing or a modification of zone pricing. Parties opposed to additional pricing flexibility are Intermedia Communications of Florida (Intermedia), the Florida Cable Television Association (FCTA), the Florida Interexchange Carriers Association (FIXCA), the Interexchange Carriers Association (IAC), MCI, Teleport Communications Group, Inc. (Teleport), Time Warner AXS of Florida (Time Warner) and the Office of Public Counsel (OPC). Alltel takes no position.

Before addressing the arguments of the parties, staff believes it is important to explain the types of pricing flexibility that the LECs have under current Commission policy. Approved tariffs are the method by which most LEC services are offered pursuant to Rule 25-4.034. In general, rates and charges are set to cover costs and provide a contribution to keeping local service rates as low as possible. These rates must be offered to subscribers on a non-discriminatory basis. However, pricing flexibility does exist in the methods of contract service arrangements (CSA) and individual case basis (ICB) pricing.

CSAs were initially authorized in Order No. 13603 (DN 840288-TL) to allow Southern Bell to offer negotiated contracts for WATS, private line and special access services where the Company faced the threat of uneconomic bypass (bypass by an entity before the LEC has an opportunity to demonstrate it can offer the facilities at a competitive price and in a timely manner). In a subsequent Order, No. 13830, the Commission also granted permission to General Telephone Company to offer CSAs. The CSA provision was subsequently expanded to cover SBT's ESSX/Centrex services and similar services by United Telephone Company. Other LECs may obtain CSA authority upon request. The number of CSAs and relevant data are reported to the Commission on a quarterly basis.

ICB pricing is an ad hoc method of pricing for those LEC services that may be unique to a subscriber's telecommunication requirements and are not covered in existing tariffs. Under this arrangement, the service is "customized" and priced on a parts-labor basis.

The parties in this docket have taken various positions which can be summarized as (1) the LECs have sufficient pricing flexibility under the existing arrangements and no additional flexibility should be approved; (2) the LECs do not have adequate pricing flexibility to compete with expanded interconnection parties and the Commission should adopt some form of the FCC's zone-density pricing methodology, and (3) access price reductions and flexibility are necessary because of the cross-elasticity between special and switched services resulting from interstate access rates being substantially higher than intrastate rates. Staff addresses these major categories and its recommendation in topics (1) through (4).

(1) LECs HAVE SUFFICIENT PRICING FLEXIBILITY AND NO ADDITIONAL FLEXIBILITY SHOULD BE APPROVED:

Parties opposed to additional pricing flexibility are Intermedia, FCTA, FIXCA, IAC, MCI, Teleport and Time Warner. Intermedia's witness testified that the Commission already has granted LECs substantial pricing flexibility which allows them to offer CSA and ICB pricing, under which the LECs may price their services at nearly any level they desire, so long as they meet the LECs' long run incremental costs. (Canis TR 53, 156, 614-15) Teleport witness Kouroupas also testified against additional pricing flexibility for the LECs, commenting that the Commission must be careful not to confuse the presence of a competitor with a competitive market, citing AT&T's statement that 99.866% of

their access services are handled by LECs. (TR 264-65)

MCI also believes that the Commission should not grant the LECs any additional pricing flexibility if expanded interconnection is permitted. The parties of Teleport, FCTA, FIXCA, ICA and Time Warner reiterate Intermedia's position that the CSAs provide the LECs with sufficient pricing flexibility (Canis TR 614-15), and, the provision of AAV service does not yet pose a substantial threat to the LECs, noting that AAV nationwide gross revenues represent less than 1% of the market for access services which remains dominated by LECs. (Canis, TR 21)

United/Centel witness Poag's rebuttal testimony disagrees with Intermedia witness Canis' position that the CSAs and ICBs provide the LECs with sufficient pricing flexibility. (Poag TR 651-52) Witness Poag argues that CSAs were a little used alternative by United Telephone because by the time the Company learned of the customer's plans to leave the network, it was usually too late to negotiate a customer-specific solution. (TR 653) He further contends that AAVs have the advantage of constructing networks and pricing their services knowing full well that the LEC cannot price a CSA without a special study. (Poag TR 653)

Staff questioned witness Poag at his deposition to determine how a pricing flexibility plan would work, and why the CSAs are insufficient. He described the FCC's pricing flexibility plan as follows: "The FCC, recognizing that not to allow the local exchange company was inappropriate, because it created a pricing umbrella for competitive entry which may drive uneconomic investments, determined that the LECs should have pricing flexibility and primarily in the more competitive areas of their business. So they allowed the companies to establish, basically, three zones where they would have deaveraged special access rates. In the high density zones they would be allowed to reduce the price of those special access services by 10% a year. In the low density zones where you have higher costs in those, less likelihood of competitive entry, they allowed the companies to increase their prices by 5 percent a year. The restrictions are not based on economics, they are just based on arbitrary numbers of 5 percent and 10 percent. When you look at the economies of scale associated with light terminal equipment and fiber-optic equipment, there are substantial economies of scale. And even with 10 percent reductions, we are going to be looking at contribution of probably 200 or 300 percent". (EXH 31, p. 23-24)

Witness Poag further stated that the FCC's arbitrary restrictions basically established a pricing umbrella which doesn't flow the real benefits of competition to the customers. (EXH 31, p. 24) He also stated that United/Centel would price based on the market, but that the floor for that price would be incremental costs. (EXH 31, p. 24-25)

In response to staff counsel on comparisons between zone density pricing and CSAs, witness Poag answered "yes" to the question "With respect to your zone density pricing, you would do some sort of a cost study essentially to determine what your price floor would be for any given zone, is that correct?" (EXH 31, p. 28) Witness Poag further indicated that the study for zone density pricing and CSAs are not the same, stating "In the CSA you're doing a customer specific study. Under a general service offering, you're looking at a universe of demand and costs." (EXH 31, p. 28)

Witness Poag reiterated his rebuttal testimony that the CSAs are inadequate in today's market, stating "Now, to implement a service contract arrangement, I've got to be there in front of that customer and know that he has been made another offer. Okay. And then I've got to do a study, a customer specific study to find out what the cost is. And I have got to go in and counter offer. And I'm going to tell you, the cow is already out of the barn". (EXH 31, p. 25-26) Witness Poag agreed with staff counsel's understanding that CSAs take too long and it is too complicated to do customer-specific studies, responding "that's one of the problems. The other one is that, you know, that door has probably been shut." (EXH 31. p. 37-38)

GTEFL witness Beauvais was also questioned on why CSAs do not provide LECs with sufficient flexibility. He indicated that the CSAs do provide some flexibility, however, from a marketing decision it would be preferable for the customer to be able to see prices in the tariffs that are closer to what you would be offering to the general public, and this is not the case. (EXH 14, p. 6)

SBT witness Denton also stated that SBT has problems with the CSA process. (EXH 21, p. 9) He indicated that the CSA is probably the ultimate form of flexibility in terms of a specific customer and dealing on a one-by-one basis. However, he argued that it cannot be the major tool in dealing with the mass market, stating that something more is required. He proposes as the next step the deaveraging of tariffs under the zone concept that SBT has in its interstate tariff. (EXH 21, p. 9)

(2) LECs REQUIRE ADDITIONAL PRICING FLEXIBILITY IN THE FORM OF THE FCC's ZONE-DENSITY PRICING FLEXIBILITY:

ATT-C states that it would not oppose granting the LECs "zone-pricing" flexibility under the same parameters established by the FCC. AT&T expresses concern about the LECs market power, noting that adoption of the FCC's approved pricing flexibility methodology appears to be the best method to prevent the LECs' abuse of their ownership and control of the local exchange network.

Sprint advocates adoption of the FCC's policy on pricing flexibility for the LECs, but with the modification that LECs be allowed to initiate zone pricing regardless of whether competitive entry has occurred. Sprint witness Rock believes "the FCC has been overly restrictive" in allowing zone pricing only after expanded interconnection offerings are operational in a particular study area, and that the Commission should send the correct economic signals to potential market entrants by permitting density zone pricing whether or not competitive entry has occurred. (TR 450)

United's witness Poag states that the Commission should generally adopt the terms and conditions prescribed by the FCC (TR 495), reiterating the FCC decisions in order No. 92-440, CC Docket No. 91-141, wherein the FCC authorized the LECs to implement a system of traffic density-related rate zones. (TR 494) Witness Poag's explanation describes how "... companies may establish a number of density pricing zones (up to three zones without further justification) within each existing study area, assigning each of the central offices to one of the zones. Finally, the FCC insists that the assignment of central offices to a zone must reflect cost-related characteristics, such as traffic density, although geographic contiguity may also be considered." (TR 494-495) Southern Bell witness Denton also supports the LECs being granted pricing flexibility on the basis of wire center groupings, rather than at averaged statewide rates. (TR 399)

United witness Poag also advocates similar terms and conditions for inter-intrastate traffic due to the use of the same facilities and to prevent tariff shopping. (TR 495) However, he does not recommend that the Commission adopt the FCC's pricing flexibility limitations. (TR 496) Instead, he recommends a zone floor of incremental cost, an approach similar to that contained in United's intrastate tariff for contract service arrangements. (TR 496) Southern Bell's witness also proposes

that expanded interconnection services be priced above their long run incremental cost floor. (Denton TR 402)

Southern Bell emphasizes that pricing flexibility in the form of the zone density pricing plan that was ordered by the FCC would be appropriate for LECs for intrastate purposes as well. However, SBT is clear in stating that no specific proposal for zone density pricing or other pricing flexibility has been presented to the Commission. SBT requests that the Commission remain open in concept to LEC proposals on the appropriate pricing flexibility, reiterating witness Denton's testimony: "My view is that if expanded interconnection is allowed, then we should have the option of filing a zone pricing tariff, for example, and have that accepted by the Commission as a competitive pricing response just as the FCC has done". (TR 423)

Southern Bell also believes there could be a negative impact on LECs if the Commission does not approve pricing flexibility for the LECs. In response to Commissioner Clark's statement: "What if we don't allow you to do that? That puts you at a competitive disadvantage" (TR 424), Mr. Denton responded:

> One is that by not letting us be as competitive with prices as we can be, you are, in effect, allowing into the market ..., competitors who don't have to face a real tough competitive price test. You may introduce some ... [inefficient] ... competitors because they have a lot of margin they can play with. I don't think that's a good thing for the consumers in the state. (TR 424)
>
> Secondly, the pricing philosophy of CAPs is [to] price below the LECs, 5% or 15%. So if our prices are kept at a higher level and their philosophy is ...[to] price below that, you have denied the consumers ... the chance to have even lower prices. If we can lower our prices, they're going to follow us down. So you deny the consumers that benefit. (TR 424-25)

Mr. Denton's third reason is his belief that this Commission has traditionally granted pricing flexibility to the LECs each time new competition is introduced. (TR 425) He also referenced the FCC's decision to allow zone density pricing flexibility,

with emphasis on the states of Illinois, New York and Massachusetts approving intrastate expanded interconnection and pricing flexibility for the LECs. (FCC Order, para 176)

GTEFL witness Beauvais (TR 368-69)and United witness Poag (TR 483,561) agree that the LECs' competitors need only price under the LEC's pricing "umbrella" kept artificially high by regulation. Witness Beauvais advocates retention of the current CSA mechanism in addition to allowing the geographical deaveraging of zone pricing, noting that contrary to some indications in the hearing, CSAs and zone pricing are properly viewed as complementary measures. The Company also emphasizes that at least one of the two AAVs in this proceeding does not oppose retention of the CSAs. (Kouroupas, TR 279-80)

In advocating additional pricing flexibility for the LECs, several parties also believe the LECs should retain the contract service arrangements (CSA) previously granted by the Commission. United/Centel states that the CSAs are an important tool in meeting competitive special access situations but that they have limited application. GTEFL's Brief includes similar comments, noting that while the CSA device can provide the LEC a good degree of flexibility, its utility has been limited by the ever-expanding competitive pressures that have come to bear since its creation. United witness Poag testified that one of the CSA restrictions is the requirement that the customer must first have been presented with a competitive proposal, however, in most cases, the customer never thinks to call the Companies to seek a counter offer when a competitive situation arises. (TR 576)

United/Centel witness Poag (TR 652) believes that CSAs should be just one weapon in his Companies' arsenal of competitive responses, and that a better weapon to deal with competition from the special access and private line vendors - including the end user himself - is zone density pricing. (TR 494-95) United/Centel believes that the principal improvement over CSAs is the fact that zone density pricing is a standard offering that allows quicker response to competitive situations. Unlike CSAs, which require customer-specific cost studies, zone density pricing is based upon zone-specific pricing studies that are applicable across a broad spectrum of competitive situations. However, there will be competitive situations where a CSA application may be more appropriate because of unique customer cost characteristics. (Poag TR 654-57)

Southern Bell believes that the LECs should retain the pricing flexibility they currently have. The Company also notes

the Commission's decision in the AAV docket to allow for additional pricing flexibility in the statement: " 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". (Order No. 24877, p. 23)

GTEFL believes that some of the CSA shortcomings can be alleviated by the Commission granting the LECs additional pricing flexibility through the use of zone pricing. The Company also concurs with Sprint witness Rock's position that the Commission should send the correct economic signals to potential market entrants by permitting density zone pricing whether or not competitive entry has occurred, and LECS should be allowed to propose different initial rates in each zone so that prices can more accurately reflect underlying costs. (TR 450-51)

The OPC position is if allowed at all, downward pricing flexibility should only be granted for competitive services such as DS-3. OPC presented no testimony in support of its position (however, the rates, terms and conditions of expanded interconnection are addressed in Issue 16).

(3) ACCESS PRICE REDUCTIONS AND PRICING FLEXIBILITY ARE NECESSARY BECAUSE OF THE CROSS-ELASTICITY BETWEEN SPECIAL AND SWITCHED SERVICES:

United/Centel do not argue against granting expanded interconnection as requested by Intermedia and already required in the interstate jurisdiction. However, in granting interconnection, the Companies believe that the Commission should:

a. Grant the LECs pricing flexibility to meet special access and private line competitors in the marketplace; and

b. Begin the process of repricing switched access service to reduce the pressure and incentives to bypass switched access services.

United/Centel witness Poag testified that expanded interconnection for special access and private line services will have a dramatic effect on United's revenues and earnings. (TR 481) He further stated that expanded interconnection principally will involve the replacement of lower-cost Company facilities which have the higher profit margins, emphasizing that revenue

from these services will decline even if pricing flexibility is granted. (TR 481)

Witness Poag argues that special access competition will benefit consumers with lower prices, however, he also believes that as special access prices are reduced relative to switched access prices, customers will migrate from switched access to special access. (TR 484) Competition will drive special access rates lower, thus more customers will migrate to special access from "over-priced" switched access. (TR 486)

Witness Poag explained that special access has been a potential substitute for switched access from the inception of interexchange access whenever a customer has large enough volumes of IXC traffic to be delivered to a single IXC. (TR 485-86) Service bypass occurs whenever the customer uses United's special access service to deliver switched traffic to the IXC, and facilities bypass occurs whenever the customer or an AAV provides the facility for the traffic. Witness Poag believes expanded interconnection will intensify the pressure for both forms of bypass. (TR 486)

United/Centel advocates reducing switched access prices to their economic cost to diminish the opportunity for bypass (Poag TR 486), and cited 3 examples of bypass (TR 488, FBP-1). Witness Poag stated that customers compare intra and interstate access charges when evaluating the economics of substituting special access for switched access, emphasizing that is why United's intrastate access rates should be reduced. (TR 491) He explained the difference in price between interstate (3.8 cents per minute) and intrastate (7.3 cents per minute) switched access, stating that United would incur an estimated annual revenue impact of $60 million if the intrastate rates were reduced to the interstate level. This equates to about $3.20 per month per residential line. (TR 492)

(4) STAFF ANALYSIS AND RECOMMENDATION:

After considering the parties' arguments, staff recommends that the Commission approve a "zone-pricing" concept for the LECs under the same general guidelines established by the FCC in Order No. 92-440, CC Docket No. 91-141. We believe it is important to emphasize approval on a <u>conceptual</u> basis as opposed to any specific plan. SBT emphasizes that not one single LEC has filed a tariff or otherwise proposed a specific plan to implement additional pricing flexibility, thus Commission consideration can only be on a conceptual basis. Therefore, specific approval or

denial of LEC zone-pricing plans and tariffs should be reviewed on an individual basis as was the case in the FCC's review of interstate filings.

Staff believes it is important to emphasize that the FCC's decision to grant pricing flexibility to the LECs was not without consideration for the opponents' positions that LECs already have substantial pricing flexibility under price caps, and that until additional competition for both switched and special access has developed, no further flexibility is appropriate. However, the FCC noted in the Order (para 172) that certain LEC services are subject to much greater competitive pressure than others, and that excessive constraints on LEC pricing and rate structure flexibility will deprive customers of the benefits of competition and give the new entrants false signals. We believe the FCC's rationale is appropriate in this proceeding as the same arguments have been presented.

If zone pricing flexibility is granted to the LECs, some of the parties have commented on when the concept should begin. Sprint supports zone-pricing flexibility, but believes the FCC has been overly restrictive in allowing LECs to initiate a zone pricing system in study areas only after expanded interconnection offerings are operational in that study area. Staff agrees with Sprint's position and recommends that the Commission permit density zone pricing whether or not competitive entry has occurred, once the zone pricing flexibility plans and tariffs have been approved.

Although the FCC Order (para 179) ties the implementation of LEC pricing flexibility to those LECs with "operational expanded interconnection offerings (defined as when an interconnector has taken the expanded interconnection cross-connect element), the FCC rejected the arguments of some parties that pricing flexibility should be delayed until competition has developed further. The FCC reasoned that competition is already developing rapidly in urban markets and will only accelerate with the implementation of expanded interconnection (para 177). Staff agrees with SBT's recommendation that the Commission not delay the implementation of pricing flexibility, noting the FCC's authorization of pricing flexibility in terms of the zoned deaveraging of state averages from the very beginning of expanded interconnections. (Denton TR 405, 411)

OPC's Brief also advocated that no price increases be allowed as a result of this docket. GTEFL witness Beauvais addressed this concern in his comments that the FCC's policy on

zone density pricing is actually too restrictive which could force prices up in rural areas. (TR 368) Staff believes these concerns should be addressed on a LEC-specific basis at the time the LECs file their intrastate zone density pricing plans and tariffs in accordance with our overall recommendation. The LECs should use their FCC-approved or pending interstate zone density plans and tariffs as a guide, with variations and justifications where appropriate, when submitting their intrastate filings.

Staff shares United's concern on the impact of cross-elasticity between switched and special access services (Poag TR 481, 484-486,491-492) and how it will affect LEC revenues and the general body of ratepayers. Switched access will be addressed in Phase II of this docket.

Southern Bell, GTEFL and United/Centel all testified for retention of the CSAs, even when admitting there are problems with the CSA process. This is not the first time the LECs have complained about CSAs as the Commission directed that the process be streamlined in the AAV Order No. 24877 issued on August 2, 1991. No testimony was presented on the results of any attempts to improve the CSA process. Accordingly, staff recommends that the LECs include comments - at the time they file their zone-density pricing plans and tariffs - on what has accomplished or will be accomplished to improve the CSA process.

In summation, staff recommends that the Commission approve, in concept, zone-pricing flexibility for the LECs. It should be approved on a conceptual basis, with LEC-specific approval held in abeyance of the review of the LEC's zone density pricing flexibility plan and associated tariff. The Commission should adopt the FCC's zone-pricing flexibility concept as a guide which allows for the establishment of three density pricing zones, requiring that rates be averaged within each zone but allowing that rates may differ between pricing zones. If a LEC desires to deviate from the FCC parameters, it should be required to identify the variation and provide justification for the change. LECs should submit their zone-density pricing plans and tariff proposals, with cost data to support rates that cover costs, within 60 days of the Order.

STAFF ANALYSIS FOR ALTERNATIVE RECOMMENDATION: As noted in the Prehearing Positions and the Primary Recommendation Staff Analysis, several of the parties believe the LECs have sufficient pricing flexibility in the contract serving arrangements (CSAs). United/Centel contends that the CSA is too limited and additional pricing flexibility is required in today's competitive

environment. (POAG TR 576) Other parties dispute the LECs' positions with testimony that the CSAs provide the LECs with an extraordinary amount of pricing flexibility, and that no new pricing flexibility is needed. (Cannis TR 53, 156, 614; Kouroupas TR 264)

Most, if not all, parties have made various references to the Commission's decision in the original docket 890183-TL that found AAVs to be in the public interest under certain terms and conditions. The resulting Order Number 24877 was issued on August 2, 1991. Southern Bell's Brief includes one reference that the Commission would allow pricing flexibility beyond the CSAs in the page 23 statement: " If any LEC finds that some other option to CSAs is necessary, then it should come before the Commission with a specific request for new pricing authority".

Staff agrees with SBT that the AAV Order does include comments about requesting new pricing authority beyond the CSAs, however, we believe the statement should also be considered in context with other comments in the Order. These include:

> ...AAVs offer competition to the LECs in such limited geographic areas that we find contract serving arrangements (CSAs) and individual case basis pricing (ICB) are sufficient;
>
> 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;
>
> ICBs apply when an end user seeks some special facilities which are not generally available in the LEC's tariff;
>
> 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 to 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.

In staff's judgment, the LECs have not complied with the Commission's order to streamline CSA procedures. The current LEC arguments about the CSAs being unwieldy or too limited are the same arguments that were made at the March 1991 AAV hearing, yet no evidence has been presented on the results of LEC efforts to streamline the CSA procedures. In contrast, the AAV parties also make the same arguments about the LECs' inefficient application of the CSAs. For example, Intermedia's brief statement in this proceeding that any delay in use of the CSAs is due to LEC bureaucracy is akin to witness Gillan's testimony in the AAV proceeding, and to which GTEFL's witness Menard concurred.

During discovery and cross examination, staff questioned some of the LEC witnesses to understand what studies or methods had been implemented to more effectively use the CSAs. SBT witness Denton stated that the Company's review of its CSA procedures was incomplete. (TR 408-409) United witness Poag discussed the problems of CSAs at length during his deposition, however, he did not mention any specific studies on their application. He did answer "yes" to staff counsel's questions of: "If customers were more aware of the availability of CSAs in competitive bid situations, wouldn't they be more inclined to call you to get a competing bid" ... followed by "...Doesn't the utility of CSAs go, aren't they more useful to you if customers are more aware of them?" (EXH 31, p. 43-44) Witness Poag further commented that he would be deluged with thousands of CSA requests if he told all of his customers that if they got a competitive

threat they could get a CSA, noting that could lead to attempts at getting a price reduction when there was no real threat. (EXH 31, p. 44)

Staff believes that it is premature to grant the LECs any additional pricing flexibility at this time. In view of well over two years passing since the Commission's Order, it does not appear that the Companies have made any significant attempts to streamline their CSA procedures. It seems reasonable that this process should be completed prior to considering other pricing mechanisms.

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

RECOMMENDATION: Staff recommends that this Commission order all Tier 1 LECs, initially, to file expanded interconnection tariffs that, at a minimum, mirror what was on file at the interstate level with the FCC as of January 1, 1994. When the LECs file the tariffs, the Commission should review the tariffs by its normal tariff review process, allowing all affected parties to examine the tariffs and to challenge them. Generally, the LECs should file the following interconnection elements: (1) the cross-connect element; (2) charges for C.O. space; (3) labor and materials for initial preparation of space for physical collocation; (4) labor and materials for installation, repair, and maintenance of equipment dedicated to virtual collocators; (5) charges for power, environmental conditioning, riser and conduit space; and (6) language to reflect that LECs and interconnectors be allowed to negotiate connection charge sub-elements where different types of electronic equipment are dedicated to interconnectors under virtual conditions.

The tariffs, with supporting information and cost data for all elements, should be filed within 30 days from the date of the order. If the rates, terms, and conditions are different than what was filed in the LEC's interstate tariff, then the LEC should provide additional detailed explanations and cost support.

Staff also recommends that the LECs should file with these tariffs, a list of central offices for which they would request an exemption from offering physical collocation, to be approved by the Commission by the standards for space availability and expansion established in issue 13.

Further, staff recommends that the Commission require the LECs to tariff expanded interconnection at the DS0 level and that the LECs tariff under terms and conditions a fresh look proposal consistent with the fresh look policy adopted by the FCC. Specifically, that customers with LEC special access services with terms equal to or greater than three years, entered into on or before January 18, 1994 be permitted to switch to competitive alternatives during the 90 day period after expanded interconnection arrangements are available in a given CO. If an end user chooses to switch to a competitor, termination charges to the LEC contract would be limited to the additional charges that the customer would have paid for a contract covering the term actually used, plus the prime rate of interest.

Finally, staff recommends that the Commission deny Teleport's and Sprint's proposal to handle the local transport for switched access through expanded interconnection.

POSITIONS OF PARTIES

INTERMEDIA: All rates and charges associated with physical and virtual collocation should be tariffed. These elements would include: central office space rental, cross-connects, power and other utilities, cage constructions, cable and conduit, splicing, testing, training, order processing, engineering and design, and central office space preparation.

ALLTEL: No position.

ATT-C: Initially the LECs should file the same rates, terms, and conditions that have been filed with and approved by the FCC (assuming that such rates cover the cost incurred in providing the services).

CENTEL: Centel adopts the position of United on this issue.

FCTA: No position.

FIXCA: No position.

GTEFL: It is best to permit the parties to negotiate their own collocation arrangements rather than restricting them with tariffs. If, however, the Commission believes that collocation tariffs are necessary, it should require LECs to mirror the prices and other terms of their interstate tariffs in their state tariffs.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND: None. If a tariff is required, the companies should be allowed to recover in tariff prices all costs, including capital costs.

IAC: No position.

MCI: Affected parties should be given an opportunity to examine the rate levels contained in any intrastate tariff and such tariff should be subject to review and challenge under the Commission's normal approval procedures for LEC tariff filings.

SOUTHERN BELL: All rate elements for both virtual and physical collocation should be tariffed, except for floor space and utility costs. Tariffed rates should be consistent with those that Southern Bell has filed with the FCC for interstate collocation.

SPRINT: The Commission should establish a policy requiring expanded interconnection offerings and central office space usage to be tariffed.

TELEPORT: To promote uniformity and facilitate effective interconnections, LECs should tariff the following non-recurring rate elements: cage construction, power cabling and racking and the cable pull. Interconnectors should also have the option to complete these tasks themselves. LECs should also tariff the following recurring rate elements: cable space, cross-connect, floor space and electric power.

TIME WARNER: LECs should tariff the following non-recurring rate elements: Cage Construction, Power Cabling, and Racking, and the Cable Pull. LECs should tariff the following recurring rate elements: cable space, cross-connect, floor space, and electric power.

UNITED: For consistency, ease of administration, and increased customer understanding, the tariffs for intrastate expanded interconnection should mirror those approved by the FCC for United Telephone.

OPC: No position.

STAFF ANALYSIS:

Introduction

The issue of tariffs is difficult because of the ongoing investigations of, and problems with, the interstate collocation tariffs. Even so, this Commission should require the LECs to file tariffs containing the rates, terms, and conditions for expanded interconnection. It should then review the tariffs by its normal tariff review process, allowing all affected parties to examine the tariffs and to challenge them.

Most parties believe that since the same equipment will carry both intrastate and interstate traffic, this Commission must mirror what is established by the FCC on the interstate

level. However, there are a few elements, such as floor space and utility costs, that some parties do not believe should be tariffed. In this issue, staff will discuss all of the parties' positions, and recommend the best course of action based on the record.

These parties believe that the Commission should mirror the rates, terms, and conditions that were established at the FCC: Intermedia, ATT-C, Centel, GTEFL, Sprint, Teleport, Time Warner, and United. These parties took no position on the issue: ALLTEL, FCTA, FIXCA, IAC, and OPC. The next few paragraphs discuss each party's positions in more detail.

Generally, Intermedia believes that the LECs should mirror the interstate rates and rate structures because it "would aid the Commission and the general public in reviewing these rates, in determining their reasonableness." (Canis TR 118-119)

Intermedia argues that all rates and charges associated with physical and virtual collocation should be tariffed. All rates should be supported with detailed cost data that is consistent with what was filed with the FCC. In addition, the LECs should use uniform rate structures and costing methodologies. (Canis TR 610-612)

Intermedia states that the FCC's failure to establish explicit standards for either physical or virtual collocation has resulted in interstate tariffs that include double-counting of overhead and direct costs. Intermedia also states that the FCC is currently investigating the collocation tariffs and is having difficulty determining if the rates are reasonable because the LECs have different rate elements and costing methodologies. (Canis TR 610) It asserts that the FCC proceeding could take 8 to 15 months to complete and will probably result in specific standards. (EX 3, p.15)

Intermedia recommends that, at a minimum, the Commission adopt standards adopted by the FCC, otherwise the Commission will have to conduct its own investigation on the very same issues. It recommends that this Commission should require LECs to establish separate rates for, or provide desegregated cost data for the following facilities and functions: central office space, cross-connects, power and other utilities, cage construction, cable and conduit, splicing, testing, training, engineering and design, and space preparation. (EX 3, p.15)

Generally, GTEFL contends that all participants in the market should be allowed to compete, under the same terms and conditions. Therefore, if AAVs are not required to file tariffs, then the LECs should also not have to file tariffs, and it would not be necessary to tariff any rates, terms, and conditions, as they would be reached by negotiation. (Beauvais TR 323-324)

However, GTEFL witness Beauvais states that "as a practical matter, if the FCC order is affirmed, the decisions of this Commission are largely moot." "Floor space is floor space, and the jurisdictional nature of the traffic is difficult to determine." (TR 358-359) Therefore, the rates, terms, and conditions in the federal tariff should be mirrored in the state tariffs. (Beauvais TR 326)

GTEFL also argues strongly against the tariffing of floor space and is currently fighting that requirement in the courts. It believes that whatever power LECs have in the provision of loops, it certainly does not have any market power in the provision of real estate or commercial/industrial floor space for collocation. Accordingly, the market can be allowed to work in the pricing of floor space. (EX 10, p.9-10)

Witness Beauvais explains this by stating that if there is no demand for the space then the price would be low, approximately equal to marginal cost. If the demand is higher, then the price which would be charged to the LEC and any other party seeking to rent the space is the same market-based price. (EX 10, p.10) Although this might be true for normal real estate, staff believes that central office floor space is not the same as normal real estate, and tariffing is necessary to prevent anticompetitive pricing.

Sprint asserts that the Commission should establish a policy in which expanded interconnection service and central office space are tariffed that follows the framework or terms, conditions, and rates approved by the FCC. (Rock TR 452) It argues this because there is potential for anticompetitive pricing and discrimination. Sprint also contends that this Commission should review the rate elements for reasonableness. (EX 24, p.8) Sprint also argues that given the fact that non-dominant carriers are currently required to file tariffs in Florida, that all interconnectors should be required to file tariffs.

ATT-C asserts that for the sake of consistency in administration and keeping things straight, the tariffed rates,

terms, and conditions should mirror the FCC's. (Guedel TR 226) The prices may differ if there are cost differences that can justify the price differences, but the cost will probably be similar. (Guedel TR 226)

ATT-C also contends that floor space should be tariffed at least initially. It agrees with the FCC's reasoning that it would help ensure nondiscriminatory availability of space with respect to price. (Guedel TR 224; EX 6, p.4) Requiring different interconnection standards for intrastate services could seriously impede the development of expanded interconnection. (EX 6, p.2)

Teleport argues basically the same things should be tariffed as were tariffed with the FCC, but it lists 9 specific items that this Commission should require LECs to abide by in their tariffs: (1) rearrangement charges must be non-discriminatory; (2) interconnectors must be given channel assignment control; (3) interconnectors must be allowed to use letters of agency; (4) escort and eviction terms must be limited to prevent the LECs from using these mechanisms as a way to invalidate the usefulness of an interconnection; (5) LECs should only force an interconnector to relocate within a central office under extreme circumstances and must give reasonable notice to the interconnector; (6) reasonable installation time frames should be tariffed; (7) interconnectors should be allowed to self-insure; (8) there should be no restrictions placed on interconnectors by LECs regarding the types of equipment that can be installed as long as it can be used to terminate basic transmission facilities; and (9) the Commission should ensure that the LECs' liability language for interconnection is reasonable. (Kouroupas TR 265-267; EX 8, p.10-11)

Staff believes that some of Teleport's proposed tariffing terms and conditions that are listed above might be appropriate for the intrastate expanded interconnection tariffs. Staff believes that the LECs should consider these terms and conditions when filing their intrastate tariffs. Staff will investigate all terms and conditions during its tariff review process.

Teleport also argues that floor space should definitely be tariffed because there is the potential for unreasonable discrimination and excessive prices would exist. Further, it states that the LECs already included floor space indirectly in their rates for all other services. (EX 8, p.6)

Southern Bell argues that it should not be required to file tariffs for floor space or utility costs. With those exceptions

all other rate elements should be tariffed and should mirror the interstate tariffs filed with the FCC. It also states that rate levels should be set to recover underlying costs. (Denton TR 399; EX 18, p.18)

Southern Bell contends that LECs should be allowed to negotiate contracts for floor space costs which would reflect mutually agreeable rates and conditions. It maintains that floor space is not a communications service and should not be tariffed. (EX 18, p.13) It argues that if the Commission determines that floor space is necessary to provide expanded interconnection, then it would have review power over any negotiated agreements between the LEC and the collocator. However, as a practical matter, Southern Bell would probably tariff floor space on the intrastate level since it was ordered to at the interstate level. (Denton TR 421)

United/Centel assert that the Commission should generally adopt the terms and conditions prescribed by the FCC for expanded interconnection. This is because the interconnector has the ability to send both interstate and intrastate traffic across the same facility and could "shop for the best price." (Poag TR 495) With the exception of mandatory physical collocation, United/Centel is in favor of mirroring its interstate tariffs filed with the FCC. (EX 30, p.12)

MCI argues that whatever tariffs are filed, affected parties should be given an opportunity to examine the rate levels contained in any intrastate tariff and such tariff should be subject to review and challenge under the Commission's normal approval procedures for LEC tariff filings.

Indiantown, Northeast, Quincy, and Southland argue that if a tariff is required, then the LEC should be allowed to recover all costs, including capital costs, in the tariff prices.

The FCC looked at two issues in regard to the tariffing of expanded interconnection. The first issue was whether the LECs should offer the services through a tariff at generally available, averaged rates, or whether they should be allowed to offer the services under individually negotiated provisions. The second issue was whether floor space should be tariffed. (FCC Order, Released 10/19/92,, para 155) Since LECs have substantial market power over interconnectors, the FCC said that tariffing requirements must be established to prevent anticompetitive pricing and discrimination. It also determined that central office space is an integral part of expanded interconnection and

is necessary to complete calls. (FCC Order, Released 10/19/92, para 162)

Initially, the FCC required the LECs to tariff: (a) the cross-connect element; (b) charges for central office space which must be tariffed at a uniform charge per square foot; (c) labor and materials charges for initial preparation of central office space under physical collocation; and installation, repair and maintenance of central office equipment dedicated to virtual collocation interconnectors; (d) other charges that can be reasonably standardized, such as power, environmental conditioning, and the use of riser and conduit space; and (e) language to reflect that LECs and interconnectors be allowed to negotiate connection charge sub-elements where different types of central office electronic equipment are dedicated to interconnectors under virtual conditions. (FCC Order, Released, 10/19/92, para 157-158)

Staff Conclusion

The tariffing issue in this docket is difficult because it is hard to know what specific rates, terms, and conditions should be tariffed when most parties did not testify to them. The reason why many specifics were not discussed is because of what is currently happening on the interstate level with the LECs' expanded interconnection tariffs. Several of the elements and rates are under investigation at this time by the FCC, and until those investigations are complete, it will be hard to know what rates, terms, and conditions are fair to all parties.

Staff believes that the FCC's position is correct, and that tariffing requirements must be established to prevent anticompetitive pricing and discrimination. Staff recommends that this Commission order, initially, all Tier 1 LECs to file expanded interconnection tariffs that, at a minimum, mirror what was filed at the interstate level with the FCC. When the LECs file the tariffs, the Commission should review the tariffs by its normal tariff review process, allowing all affected parties to examine the tariffs and to challenge the tariffs. When the LECs file their proposed tariffs, the 60 day statutory time clock begins, therefore, staff believes that it would be to all of the parties best interest to work out the problems with the tariff during the Commission's normal tariff review process. If not, it is more likely for the parties who do not agree with the filings to protest the tariff.

Most parties to this docket believe that the Commission

should initially mirror the FCC on this issue. Staff argues that it makes sense to have the LECs file tariffs which reflect rate structures, terms and conditions that, at a minimum, mirror the FCC's for a couple of reasons because the same facilities will carry both interstate and intrastate traffic, then the rate structures, terms, and conditions of the tariffs should be similar, if not the same. Staff believes that if for some reason the LECs do believe that some rate, rate structure, term, or condition should be different than what was filed with the FCC, then the LECs need to justify the difference.

One issue that is disputed is whether floor space should be tariffed. Southern Bell and GTEFL do not think floor space for collocation is a communications service. Southern Bell believes that floor space should not be tariffed and that LECs should be permitted to negotiate contracts and "terms using market-based rates for equivalent space." (EX 18, p.13) GTEFL believes that LECs do not have any market power in the provision of real estate for collocation. (EX 10, p.9) Regardless, staff observes that the FCC found it necessary to tariff floor space in order to prevent anticompetitive or discriminatory pricing. (FCC Order, Released 10/19/92, Para 161-162)

Staff believes that central office floor space is an integral part of expanded interconnection and should be tariffed. Accordingly, staff recommends that LECs should be required, at a minimum, to initially file tariffs that mirror the following Fcc standards:

a. The cross-connect element;

b. Charges for central office space which must be tariffed at a uniform charge per square foot;

c. Labor and materials charges for initial preparation of central office space under physical collocation; and installation, repair and maintenance of central office equipment dedicated to virtual collocation interconnectors;

d. Other charges that can be reasonably standardized, such as power, environmental conditioning, and the use of riser and conduit space; and

e. Language to reflect that LECs and interconnectors be allowed to negotiate connection charge sub-elements where different types of central office electronic

> equipment are dedicated to interconnectors under virtual conditions. These rates, terms and conditions must be available to all similarly situated interconnectors. (FCC Order, Released 10/19/92, para 157-158)

The tariffs, with supporting data for all elements, should be filed within 30 days from the date of the order and should mirror the tariffs on file with the FCC as of January 1, 1994. If the rates, terms, and conditions are different from what was filed in the LEC's interstate tariff, then the LEC should be required to provide detailed explanations and cost support.

Staff also recommends that the LECs should indicate in these tariffs, those central offices for which they would request an exemption from offering physical collocation to be approved by the Commission by the standards for space availability and expansion established in issue 13.

RELATED TARIFFING ISSUES

In Issue 2 of this docket, the parties stipulated that the FPSC is not bound by the FCC decision in Docket 91-141. ICI's Petition seeks authority to provide interconnection for intrastate special access and private line services. The FCC's order only relates to interstate access services. There is no dispute among the parties that this Commission is free to approve or deny ICI's Petition, as well as take additional steps that it deems to be appropriate.

Teleport's witness Kouroupas and Sprint's witness Rock have provided testimony regarding additional actions that the Commission should take in order to bring additional benefits to the access marketplace. These actions include extending interconnection to the DS0 level, adopting a "fresh look" approach, and allowing interconnectors to provide the local transport portion of switched carrier access. Staff has broken out each of these proposals into a separate discussion in order to evaluate their merits. Staff believes that it is appropriate to address these proposals under the tariffing issue.

Extending Expanding Interconnection to the DS0 Level

In the FCC's decision which authorized expanded interconnection for special access, the FCC limited the degree of interconnection to the DS1 and DS3 level. Teleport's witness

Kouroupas testified that the FPSC should require interconnection at a DS1, DS3 and DS0 level to extend the benefits of collocation to all special access customers. He argues that restricting interconnection to the DS1 and DS3 levels denies the benefits of collocation to a large number of customers who currently use special access facilities with speeds below a DS1 capacity. Witness Kouroupas states that:

> The only way for a competitor to serve such a collocation arrangement would be to purchase LEC multiplexing services and individual DS0 end links. This makes the competitor captive to the LEC's multiplexing prices and service quality, while at the same time eliminating any competitive check on the reasonableness of these multiplexing prices. (Kouroupas TR 245)

Southern Bell's witness Denton testified that the Commission should not adopt Teleport's position that expanded interconnection should include interconnection at the DS0 level. Witness Denton contends that being required to file interconnection tariffs at the DS0 level would place a larger requirement for space and cabling on the LECs. He testified that Southern Bell would prefer to handle requests for DS0 collocation on a central office by central office basis. (Denton TR 639-640)

Staff Conclusion

Staff agrees with Teleport that expanded interconnection at the DS0 level will extend the benefits of competition to a greater number of end users. Staff believes that allowing interconnection at the DS0 level will help satisfy the needs of medium to small users who do not produce the volume of traffic that would warrant a DS1 or DS3 interconnection. With the exception of Southern Bell witness Denton's rebuttal testimony, the parties in this proceeding did not address Teleport's position that expanded interconnection should be extended at the DS0 level. Southern Bell's witness did not oppose allowing the AAVs to provide expanded interconnection to the DS0 level, but recommended that the Commission allow the LECs to handle such requests on a case-by-case basis because of the potential space and cabling limitations. Staff believes that allowing LECs to handle requests for DS0 collocation on a case-by-case basis may create unnecessary delays and frustration to the AAVs. Staff acknowledges that interconnection at the DS0 level may create more demands on the LEC CO for space and cabling; however, there

is no evidence to support that such action will exhaust the LEC's CO space. If collocation at the DS0 level does exhaust CO space then the AAVs will need to seek some alternative arrangements. Issue 13 addresses the requirements for floor space and the requirements if floor space is exhausted. Therefore, staff recommends that the Commission require expanded interconnection at the DS0 level which will increase the prospects of a more competitive marketplace.

Fresh Look

Teleport's witness Kouroupas argues that the Commission should adopt a "fresh look" provision designed to allow consumers to exercise their option of choice in the special access market without incurring substantial penalties for doing so. This suggests that consumers should be free to terminate existing contracts with LECs in order to switch to competitive alternatives without occurring substantial financial liabilities for terminating these contracts. Witness Kouroupas testified that precedents for such action exist at the federal level where the FCC disallowed the provision of any termination liabilities for customers who switched their 800 service from AT&T to another carrier. (Kouroupas TR 245-246)

During cross-examination, witness Kouroupas suggested that a "fresh look" provision could be implemented by this Commission in the same fashion that the FCC adopted its "fresh look" provision in its decision on expanded interconnection for interstate special access. (TR 277-278) In Docket No. 91-141, the FCC ordered that customers with LEC special access services with terms equal to or greater than three years, entered into on or before September 17, 1992, be permitted to switch to competitive alternatives during the 90 day period after expanded interconnection arrangements are available in a given CO. If an end user chooses to switch to a competitor, termination charges to the LEC contract would be limited to the additional charges that the customer would have paid for a contract covering the term actually used, plus the prime rate of interest. (Kouroupas TR 277-278)

In his rebuttal testimony, Southern Bell's witness Denton testified that the Commission should reject Teleport's "fresh look" provision. Witness Denton makes several points with regard to this proposal. First, he argues that competition for these services exists at the present time and that the FPSC has already determined that contracts for these services are in the public interest. Second, many special access and private line contracts

are designed to recover their installation charges over the life of the contract. If the Commission adopts a fresh look approach there is the potential that the LECs will not be able to fully recover these installation costs. As a result, the LECs could be forced to provide service below the actual cost to these customers without being able to recover the costs as anticipated during the terms of the contract. (Denton TR 638-639)

GTEFL's witness Beauvais testified that GTE petitioned the FCC for reconsideration of the FCC's fresh look policy. Witness Beauvais stated that GTE opposed the fresh look policy under the notion that these end users are sophisticated customers and that there is no reason to void a valid contract simply because a new option becomes available. He contends that these customers knew these options were there or were coming shortly, and that they could have elected to take a shorter tariff period. (TR 373-374)

Staff Conclusion

Staff believes that introduction of competition or extending the scope of competition provides end users of particular services opportunities that were not available in the past. However, these opportunities are temporarily foreclosed to these end users if they are not able to choose competitive alternatives because of substantial financial penalties for termination of existing contract arrangements. Teleport's proposal that the Commission institute a "fresh look" provision is premised on the idea that as a result of the changing regulatory climate, end users should be permitted to exercise this new found freedom without incurring financial hardship. Staff agrees that adoption of a "fresh look" proposal will enhance end users' ability to exercise choice to best meet their telecommunications needs. In approving a fresh look provision, the Commission will increase the possibilities for a competitive marketplace for special access and private line services to develop. Otherwise, some users of these services may not be able to benefit from competition until their current contract expires, which could be as much as five years from now. Staff agrees with witness Denton that competition for private line and special access currently exists. However, if the Commission adopts expanded interconnection, staff believes that competition will be extended to many end users that did not have alternatives to the LEC. Also, staff is not persuaded by witness Beauvais' argument that customers knew that alternatives to LEC private line and special access service would be available shortly, and that they could have elected to take a shorter contract period. Even if the Commission approves expanded interconnection, there is no

guarantee that customers of LEC private line and special access services will have competitive alternatives in all areas.

Staff disagrees with witness Denton that if the Commission adopts the FCC's "fresh look" provision there is the potential that the LECs may not be able to fully recover their installation costs. Under the FCC "fresh look" provision the LEC would limit the termination liability to the amount that the customer would have paid for the services actually used. For example, if an end user has a five-year contract but terminates the contract after three years, the termination liability would equal the difference between what the end user would have paid if the contract was three years and what he actually paid. Hence, the end user pays all of the installation costs.

Staff believes that adopting a "fresh look" provision in this proceeding will extend the benefits of competition and permit end users to determine if alternative providers can best meet their telecommunications needs. Therefore, staff recommends that the Commission adopt a fresh look provision consistent with the policy adopted by the FCC. Specifically, staff recommends that customers with LEC private line and special access services with terms equal to or greater than three years, entered into on or before January 18, 1994, be permitted to switch to competitive alternatives during the 90 day period after expanded interconnection arrangements are available in a given CO. If an end user chooses to switch to a competitor, termination charges to the LEC contract would be limited to the additional charges that the customer would have paid for a contract covering the term actually used, plus the prime rate of interest.

Local Transport Carriage

A third recommendation offered by Teleport was that the Commission should permit interconnectors to provide the local transport portion of switched carrier access. Teleport's witness Kouroupas stated that:

> The local transport portion of switched carrier access provides transmission facilities between an IXC POP and LEC CO. Local transport switched access facilities are dedicated point-to-point high volume facilities. Although telephone companies offer these services within "switched access" service categories, the economic and

> technical nature of local transport circuits are more akin to private line services. Similar to private line services, local transport carrier access is provided between two discrete points, namely the interexchange carrier POP and the telephone company CO. There is no "switching" or call routing involved in local transport. (Kouroupas TR 247-250)

Teleport contends that local transport represents approximately 75% of all circuits between an IXC POP and a LEC CO. Teleport believes that competition for the local transport portion of switched access services increases the prospects for effective competition in the private line market. It is Teleport's position that if they are able to compete for the provision of the local transport portion of switched access on the same terms and conditions as the serving LEC, then Teleport will be better able to meet the needs of IXCs. Further, Teleport contends that unless AAVs are permitted to combine access services (i.e., special and switched) over one facility as LECs currently do, then interconnectors will not be able to effectively compete. (Kouroupas TR 248-249)

Sprint's witness Rock supports the position that the Commission should allow dual use of the collocation facilities for the origination and termination of special access and switched traffic. (TR 444-445) Sprint argues that not allowing this provision would appear to prohibit an IXC that takes advantage of expanded interconnection, either directly or by means of arrangements with an AAV, to use collocated facilities in the LEC CO as a point from which to order switched access. Moreover, such a prohibition would preclude IXCs from making efficient use of the LEC network.

In its brief, Sprint states that:

> Sprint is not suggesting here, in advance of a Commission order requiring switched access interconnection or assessment of the Florida Statute authorizing alternative access, that the actual cross-connect circuits connecting special access circuits from the IXC or CAP "cage" within the LEC central office be used to handle both switched and special access. Rather, interconnectors should be permitted to order the presently tariffed switched

> access services, provided over conventional LEC facilities, to their sites on the LEC premises. Sprint believes that this type of scenario constitutes dual use and not "ratcheting" as suggested during the Hearing. (Rock TR 444-445)

Further, Sprint states in its brief that:

> Dual use, on the other hand, will allow shared and efficient use of collocation facilities. By allowing dual use of special access collocation sites, an interconnector or its customer would still be required to purchase LEC provided local transport service which is recovered via a fixed non-distance sensitive per minute of use (MOU) charge in Florida. Thus from the LEC revenue management standpoint, permitting dual use of special collocation sites would have no impact on LEC revenues....
>
> Moreover, the IXCs that are in the process of reconfiguring their local access arrangements should not be forced to make decisions predicated on a LEC rate structure that will only be in effect for a few months. The Commission has the opportunity to provide for an efficient transition to a competitive access market by allowing switched access to terminate at special access collocation sites prior to switched interconnection. Thus, the Commission can develop the framework for switched access interconnection by allowing dual use of the collocated facilities which will alleviate unnecessary steps being made in the future. (Rock TR 444-445)

In response to Teleport's and Sprint's positions, Southern Bell's witness Denton testified in rebuttal that the Commission should not allow interconnectors to provide the local transport portion of switched carrier access in conjunction with expanded interconnection for special access and private line. Witness Denton states in his rebuttal testimony that:

> This request involves "ratcheting" the special access high capacity service to

provide both special access and private line dedicated services as well as the local transport portion of switched access (i.e. shared use).

The FCC is on record, of course, that it does not believe that interconnectors should be allowed to "ratchet" before a new local transport rate structure is implemented. The FCC correctly recognized that the LECs would face the potential of losing significant amounts of revenue if "ratcheting" were allowed before local transport restructuring occurs. The FCC found, therefore, that "ratcheting" is not in the public interest at the present time.

The FCC's decision underscores the fact that switched access collocation involves far greater public interest issues than does special access collocation. Local transport must be resolved before switched access collocation can be considered. The LECs must have the opportunity to restructure local transport rates and readjust prices prior to facing collocation for switched access services. (TR 637-638)

Staff Conclusion

Staff agrees with Southern Bell's witness Denton that the proposals offered by Teleport and Sprint to allow interconnectors to use collocated facilities to handle local transport have far greater public interest considerations than does special access and private line. The scope of this proceeding was limited to special access and private line services with the understanding that phase II of this proceeding would address switched interconnection. Staff recognized the desires of interconnectors to configure their networks in the most efficient and economical manner; however, staff recommends that the Commission reject Sprint's and Teleport's proposal and address this issue in more detail during phase II of this proceeding. Although witness Rock states that under dual use of collocated facilities there would be no impact on the LECs, it is unclear from the evidence in this proceeding that this is necessarily the case. Further staff believes that permitting interconnectors to handle the local transport piece of switched access may predetermine the

Commission's decision in phase II.

SUMMARY

With regard to the related tariffing proposals, first, staff recommends interconnection be extended to the DS0 level as proposed by Teleport. Second, staff believes that a competitive access marketplace will develop faster with the approval of a fresh look provision. Thus, staff recommends that the Commission adopt the same fresh look provision that was adopted at the federal level in Docket 91-141, for contracts enter into on or before January 18, 1994. Third, staff recommends that the Commission not approve the local transport piece of switched access which was proposed by Teleport and Sprint. This issue will be addressed in phase II of this proceeding.

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

RECOMMENDATION: No. The Commission should exempt AAVs and AAV-like interconnector entities from tariff filings as it did with the AAVs in Order No. 24877.

POSITIONS OF PARTIES

INTERMEDIA: No. The Commission should continue its policy of exempting AAVs from tariffing requirements. Unlike the LECs, AAVs have no dominant position over their customers that can be abused in contract negotiation. Moreover, their customers are generally sophisticated users who do not need expansive Commission protection.

ALLTEL: No position.

ATT-C: No position.

CENTEL: No.

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

FIXCA: Yes. The Commission should require that all access providers tariff their services so that it may guard against discrimination in this market. This requirement is particularly critical with respect to switched access services where any discrimination between access customers -- i.e., the interexchange carriers -- will seriously disrupt interexchange competition.

GTEFL: All market participants should be allowed the same freedom to compete, under the same terms and conditions. Thus, if the Commission finds it appropriate that the LECs operate under tariffs, then all special access and private line providers should be subject to the same condition.

INDIANTOWN, NORTHEAST QUINCY, SOUTHLAND: Yes, if LECs have to. Regulatory burdens should be equivalent.

IAC: Yes. The Commission should require that all access providers tariff their services so that it may guard against discrimination in this market. The requirement is particularly

critical with respect to switched access services where any discrimination between access customers -- i.e., the interexchange carriers -- will seriously disrupt interexchange competition.

MCI: No position.

SOUTHERN BELL: If tariffs are required for any providers of special access or private line services, then tariffs should be required of all providers of these services. Southern Bell, however, believes that the better alternative would be to remove these competitive services from the detailed regulatory requirements that apply today.

SPRINT: Yes, but only because non-dominant carriers are currently required to file tariffs in Florida. Given that non-dominant carriers may be an interconnector and are required to file tariffs, all interconnectors must be required to file tariffs to prevent discrimination.

TELEPORT: No. The Commission should continue to exempt AAVs from a tariff filing requirement as it did in Order No. 24877.

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

UNITED: No.

OPC: Yes.

STAFF ANALYSIS: The parties are almost equally divided on whether all special access and private line providers should be required to file tariffs. Sprint Communications Company Limited Partnership (Sprint), GTE Florida, Incorporated (GTEFL), the Florida Interexchange Carriers Association (FIXCA), Interexchange Access Coalition (IAC), the Office of Public Counsel (OPC), Southern Bell Telephone and Telegraph Company (SBT), Indiantown, Northeast, Quincy and Southland are in favor of tariffs, while Florida Cable Television Association (FCTA), United Telephone Company of Florida (United), Central Telephone Company of Florida (Centel), Intermedia Communications of Florida (Intermedia), Teleport Communications Group, Inc. (Teleport) and Time Warner AXS of Florida (Time Warner) do not believe tariffs are necessary. AT&T Communications of the Southern States, Inc. (ATT-C), ALLTEL and MCI take no positions.

The parties opposing tariffs generally support their positions based on the Commission's decision in a previous docket that AAVs should not file tariffs. That decision was the result of the March 28-29, 1991 hearings which found Alternate Access Vendors (AAV) to be in the public interest under certain terms and conditions of certification and operation. Those conditions were codified in Order No. 24877 issued on August 2, 1991.

The Commission placed no tariff requirements on AAVs, stating that tariffs would provide limited benefit as customers using AAV services are more sophisticated than the average IXC customer. These high-volume users of AAV services should thus be aware of the risk in dealing with the AAVs (Order No. 24877, page 17).

Several parties allude to the Commission's decision in Order No. 24877 (Time Warner, Teleport, Intermedia, FCTA). United/Centel support less regulation, not more, as its markets become more and more competitive. Witness Poag also states that these same freedoms should also be extended to United and the other LECs. (EXH 30, p. 1) Intermedia witness Canis testified that AAV services are priced according to the dictates of the market rendering a tariffing requirement superfluous, in contrast to the Commission requiring LECs to file tariffs as LEC customers are captive, and the LECs have strong incentives to cross-subsidize competitive services with monopoly services. (TR 53)

GTEFL and SBT contend that the original rationale for not requiring AAVs to file tariffs is not as relevant at the present time. GTEFL emphasizes that expanded interconnection will greatly alter the circumstances that existed when the Commission issued the AAV order, noting that Intermedia's witness testified that an AAV will now be able to reach any customer on the LEC's ubiquitous network (Canis TR 70, 91, 144), and that ICI has explicitly expressed its intentions to expand its marketing efforts to medium and small users -- and perhaps even the residential market -- as regulators allow increasingly greater competition. (Canis TR 70-71, 629-30) As Mr. Canis affirmed, these smaller users are generally less aware of competitive choices and alternatives than existing, typically large, AAV customers. (TR 70)

SBT reiterated GTEFL's position that the AAV docket ruling was based upon factors that are becoming less pertinent, noting that Mr. Canis' testimony (TR 53) included comments from the Commission Order that "AAV customers ... will tend to be high

volume sophisticated customers at first (emphasis added)." (Order No. 24877, p. 17)

SBT also emphasizes the need for parity in regulatory treatment of LECs and competitors alike, commenting that the tariff requirement that applies to LECs at present provides a good example of why movement toward comparable treatment is needed. SBT believes that LEC tariffs place them at a competitive disadvantage as they cannot respond in the "expeditious" fashion that is exhibited by its competitors. (Canis TR 68 "...; competitive access providers typically are able to introduce services on a very expeditious basis"). GTEFL states that the best approach would be to forego tariffing requirements for all special access and private line providers, including the LECs, with witness Beauvais testifying that unilateral tariff requirements tend to weaken price competition, thus lessening the benefits to the ultimate consumer. (TR 323-24)

The parties advocating tariffs for the non-LEC providers generally believe that less, rather than more, regulation is desirable (GTEFL Brief and United witness Poag testimony). However, if the Commission decides to maintain tariffing requirements, these same requirements should apply to all (Indiantown, Northeast, Quincy, Southland, FIXCA and IAC Briefs). Sprint believes tariffs, if required, should be required for all providers, because non-dominant carriers who are currently required to file tariffs may become interconnectors, thus a uniform tariff requirement would prevent discrimination. (Rock TR 453)

SBT advocates parity among all providers if tariffs are required, with witness Denton testifying "in the context of the regulatory requirements on us relative to our competitors, ... over time we ought to evolve to where we have the same set of requirements for providing competitive services." (EXH 21, p. 29)

Staff does not recommend that the Commission require the AAV and AAV-like interconnector entities to file tariffs. While it may be true that AAVs will expand their services to medium and small customers, we support the parties who advocate less, not more, regulation. If subsequent events reveal discrimination among customers, the Commission can reconsider the need for AAVs and AAV-like interconnector entities to file tariffs.

Sprint has expressed concern that non-dominant carriers would suffer discrimination should they become interconnectors and have to file tariffs. Staff does not agree. We believe all

parties who are currently under tariff mandates should continue for the present time; however, if Sprint or another IXC offers AAV services, then it is required to be certificated as an AAV and is exempt from tariffing those services. The Commission made this clear in Order No. 24877, page 13: "An IXC which purchases special access-type services (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."

We believe our no-tariff recommendation for AAV and AAV-like interconnector entities is consistent with SBT's position. The Company states that it does not request that AAVs be required to file tariffs for collocation, nor does it request that LECs be relieved from tariffing at this time. Rather, the Company asks that the Commission remain open to considering future proposals for parity in tariff requirements. Staff supports this "open door" approach as it gives the Commission the flexibility to reconsider both LEC and non-LEC tariff requirements after the effects of expanded interconnection, if approved, have been evaluated on a prospective basis.

ISSUE 18: What separations impact will expanded interconnection have on the LEC? **[DAVIS]**

RECOMMENDATION: Expanded interconnection will not have any material impact on separations. Migration will have an impact on separations, but is not measurable at this time.

POSITIONS OF PARTIES

GTEFL: Expanded interconnection could have potentially significant effects on the jurisdictional separation of LEC costs. It will result in a decrease of the costs of special access and an increase in the cost of all other LEC services.

INTERMEDIA: For special access, none.

INDIANTOWN/NORTHEAST/QUINCY/SOUTHLAND: There will be an effect, but Indiantown, Northeast, Quincy and Southland are unable at the present time to quantify that effect.

SBT: Southern Bell has not developed a forecast of demand for collocation and related separations effects and, therefore, does not know the potential jurisdictional separations impact of expanded interconnection. Accordingly, Southern Bell is unable to state a position on this issue at this time.

CENTEL/UNITED: The central office investment used in the provision of local switching is allocated in the jurisdictional separations process using a usage sensitive factor (Dial Equipment Minutes). As the toll/access minutes are moved from the switched network to dedicated special access, the local allocation of these investments and related expenses will increase, putting upward pressure on local service rates.

ALLTEL, AT&T, FCTA, FIXCA, MCI, OPC, SPRINT, TELEPORT and TIME WARNER: No position.

STAFF ANALYSIS: GTE Florida Incorporated (GTEFL) and Central Telephone Company of Florida/United Telephone Company of Florida (Centel/United) argue that there will be a potentially significant effect on Local Exchange Company (LEC) separations due to decreased use of the interoffice transport facilities and the resulting reallocation of fixed costs to other services (Beauvais TR 321,322) and migration from switched to special access services.(Poag TR 489)

The central office investment used in the provision of local switching is allocated in the jurisdictional separations process using a usage sensitive factor (Dial Equipment Minutes). As the toll/access minutes migrate from the switched network to dedicated special access, the local allocation of these investments and related expenses will increase. This fixed cost reallocation of interoffice transport facilities (Beauvais TR 321,322) should be small as well as the migration from switched to special access services (Poag TR 489) and should be offset by normal growth and offsetting operating efficiencies in reaction to expanded competition.(Rock TR 454)

The LECs acknowledge that collocation will have an effect on LEC separations, but are unable at the present time to quantify that effect because of lack of collocation demand forecasts. (Denton TR 400, Poag TR 488)

Intermedia Communications of Florida (Intermedia) contends that expanded interconnection will not have any impact on separations basing its argument on the small relative size of intrastate special access revenue of United, 1.5% of total access revenue (Poag TR 490) and 0.75% of intrastate revenue.(EXH 17, p 57) Staff believe that it would be reasonable to assume these percentages are representative of other Florida LECs. Given these small amounts, Intermedia concludes that any migration from switched access to special access will produce no significant effect on LEC separations. Sprint Communications Company (Sprint) also argues that the separations effect of collocation on the LECs will be minimal due to offsetting efficiencies in reaction to expanded competition.(Rock TR 454)

Other than the reallocation caused by migration, the effects of which no parties have been able to measure, (Denton TR 400, Poag TR 488) none of the parties have addressed any serious separation problems caused by expanded interconnection. Based on the record, staff does not foresee any serious separation imbalance where costs will not follow revenues between the jurisdictions.

Intermedia's argument that the special access and private line services are a small amount of the total LEC services and, as such, will not have a significant effect on separations assumes that the effect upon the LEC is loss of customers. The LECs put their emphasis on migration of customers. Staff agrees with Intermedia that loss of customers will not have a significant effect on separations due to the relatively small amount of revenue involved. Based on the record, it appears that

lost customers will be replaced, to a certain extent, with growth (Rock TR 454) and the loss of customers would be felt as a slowing in the growth rate to which, staff believes, the LECs will be able to adjust.

The issue of migration from switched access to special access will affect the switched access services which are a much larger portion of the LEC's operations. Staff believes that the stranded investment (Beauvais TR 321,322) is the only significant impact of expanded interconnection which would cause separations imbalance. This shifting of costs should be offset by normal growth and offsetting operating efficiencies in reaction to expanded competition.(Rock TR 454)

Thus, staff recommends that expanded interconnection will not have any material impact on separations. Migration will have an impact on separations, but is not measurable at this time.

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

Approved Stipulation: Issue 19 is deleted from further consideration in this proceeding.

STAFF ANALYSIS: This stipulation was approved at the September 13, 1993 hearing.(TR 10) Therefore, this issue is resolved.

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

RECOMMENDATION: Ratepayers who receive the benefit of competition in special access and private line services will enjoy improved services at reduced prices. The competition and increased pricing flexibility as enjoyed in interstate operations will put slight upward pressure on other services.

POSITIONS OF PARTIES

ATT-C: The financial impact on ratepayers should be negligible provided that the Commission and the LECs take the appropriate steps to move the price of intrastate switched access closer to the cost of providing the service.

CENTEL/UNITED: Special and switched access services and private line services provide a substantial contribution. Those end users that are able to take advantage of the price benefits of expanded interconnection alternatives will pay less, while those customers who do not qualify for expanded interconnection alternatives will have to pay more for their same service.

FCTA: The ratepayers would not be financially harmed by expanded interconnection.

GTEFL: The ratepayer effects of expanded interconnection will depend on the way in which it is implemented. In any case, expanded interconnection will ultimately mean higher rates for the average residential ratepayer.

INTERMEDIA: Ratepayers who receive the benefit of competition in special access and private line services will enjoy improved services at reduced prices. This financial benefit will promote the general public interest by lowering input costs for the production of goods and services.

INDIANTOWN/NORTHEAST/QUINCY/SOUTHLAND: Different classes of ratepayers may be affected differently and the rural subscribers may be adversely affected by expanded interconnection.

OPC: Users of AAV services should obtain lower prices and higher quality service.

SBT: If the LECs are not able to compete for the provision of telecommunications services that currently provide a contribution

to residential service, then this would have an adverse impact on residential ratepayers.

TELEPORT: Ratepayers will benefit financially from expanded interconnection. To the extent that expanded interconnection leads to increased competition for access services, ratepayers will benefit from LEC efforts to increase efficiency and lower costs. The LEC should flow through these efficiencies and cost reduction to consumers.

ALLTEL, FIXCA, MCI and SPRINT: No position.

STAFF ANALYSIS: The Florida Cable Television Association (FCTA) believes that the ratepayers would not be financially harmed by expanded interconnection due to the offsetting efficiencies in Local Exchange Company (LEC) operations and reduced costs when faced with increased competition.(Canis TR 22,58, Kouroupas TR 243,244,)

AT&T Communications of the Southern States (ATT-C), GTE Florida Incorporated (GTEFL), Southern Bell Telephone and Telegraph Company (SBT) and Central Telephone Company of Florida/United Telephone Company of Florida (Centel/United) believe that the ratepayer effects of expanded interconnection will depend on the way in which it is implemented and the pricing flexibility that the LECs are allowed.(Denton TR 405, 411-412, Rock TR 451, Poag TR 494, 507-514) GTEFL believes that expanded interconnection will ultimately mean higher rates for the average residential ratepayer because of lost contribution.(Beauvais TR 321-322) ALLTEL Florida (ALLTEL), GTEFL, Indiantown Telephone Company, Northeast Florida Telephone Company, Quincy Telephone Company and Southland Telephone Company (Indiantown/Northeast/Quincy/Southland) note that rural subscribers may be adversely affected by expanded interconnection.(Beauvais TR 310-311, Eudy TR 678, Carroll TR 663)

Staff agrees with Intermedia Communications of Florida (Intermedia), the Office of Public Counsel (OPC) and Teleport Communications Group's (Teleport) position that ratepayers who receive the benefit of competition in special access and private line services will enjoy improved services at reduced prices.(Canis TR 23, 58, Kouroupas TR 243,244, EXH 30 p. 4) This financial benefit will promote the general public interest by lowering input costs for the production of goods and services.

As the cost of special access becomes more attractive,

customers will migrate from switched access to special access.(Poag TR 487-492) As the toll/access minutes migrate from the switched network to dedicated special access, the local allocation of these investments and related expenses will increase.(Beauvais TR 321,322) This will put upward pressure on the rates for other services, especially local service, (EXH 30 p. 5) but the impact is not measurable at this time.(Denton TR 400, Poag TR 488) Rural subscribers may be adversely affected by expanded interconnection.(Beauvais TR 310-311, Eudy TR 678, Carroll TR 663)

The impact on the ratepayers of migration from switched to special access and the related stranded investment is the loss of contribution to fixed costs that switched access provides net of the contribution provided by the special access which replaces it and allocation of the stranded investment to the remaining switched access customers.(Beauvais TR 321,322) The contribution to fixed costs provided by switched access is much greater than the contribution by special access and private line services which will produce some revenue loss as well and put some upward pressure on other rates. The LECs will see a gradual decline in revenue growth which will require them to adjust their operations and offset lost revenue with efficiency gains and customer growth.(Rock TR 454). The effects of expanded interconnection should mean a slower growth rate, rather than revenue loss.

The additional pricing flexibility requested by the LECs will put slight upward pressure on the rates for other services, especially local service, due to lower revenues as the LECs adjust prices to meet competition.(Beauvais TR 321-322) There is nothing in the record to show any meaningful estimation of this pressure, (Denton TR 400, Poag TR 488) and staff believes that this pressure will be small and be offset by operating efficiencies and customer growth.(Rock TR 454)

Thus, staff recommends that ratepayers who receive the benefit of competition in special access and private line services will enjoy improved services at reduced prices. The competition and increased pricing flexibility as enjoyed in interstate operations will put slight upward pressure on other services.

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

RECOMMENDATION: Yes. If the Commission finds expanded interconnection for special access and private line to be in the public interest, staff recommends that the Commission grant ICI's Petition under the terms and conditions set forth in the previous issues. However, if the Commission does not find expanded interconnection to be in the public interest, staff recommends that ICI not be treated any differently than any other AAV and the Commission should deny ICI's Petition.

INTERMEDIA: Yes.

ALLTEL: ALLTEL has no position on this issue as it relates to Tier 1 companies. As it relates to Tier 2 companies like ALLTEL, the FPSC's policy on expanded interconnection for alternative access vendors should mirror the policy recently adopted by the FCC, i.e., expanded interconnection should not be required for Tier 2 local exchange companies like ALLTEL. The FCC Order applies only to Tier 1 local exchange companies, and for good reason, specifically exempts all others.

ATT-C: The Commission should grant Intermedia's petition consistent with the positions taken by AT&T in this docket.

CENTEL: Centel adopts the position of United on this issue.

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

FIXCA: No position.

GTEFL: GTEFL would not object to the Commission granting ICI's petition, provided the Commission ensured sufficient pricing flexibility, symmetrical regulatory treatment for all market participants, and a LEC-option policy for collocation.

INDIANTOWN, NORTHEAST, QUINCY, SOUTHLAND POSITIONS: No position.

IAC: No position.

MCI: No position.

SOUTHERN BELL: Any action this Commission takes on the ICI petition should be consistent with its general rulings in this docket.

SPRINT: Yes. The Commission should grant ICI'S Petition to interconnect pursuant to the terms and conditions developed in this proceeding for expanded interconnection.

TELEPORT: Yes.

TIME WARNER: Under expanded interconnection, ratepayers will be able to obtain lower prices and a higher quality of telecommunications service.

UNITED: Yes. ICI's petition should be granted on the condition that the Commission adopt United Telephone's recommendations embodied in its position on these issues and in the testimony of its witness F. Ben Poag.

OPC: Yes, but only to the extent consistent with the other issues in this case.

STAFF ANALYSIS: On October 16, 1992, ICI filed a Petition with the FPSC. Specifically, ICI requests the Commission to mandate local exchange carriers (LECs) to file tariff revisions necessary to allow AAVs to provide authorized intrastate services through physical collocation arrangements that will be established within LEC central offices.

Through its Petition, ICI seeks that LECs be mandated to establish tariffed rates, terms and conditions necessary to permit certificated AAVs to use physically collocated facilities to provide intrastate special access and private line services authorized in the AAV certificates. It is ICI's position that such a mandate would be consistent with established Commission policies and would yield substantial and immediate benefits to the public.

In principle, the parties to this proceeding all agree that expanded interconnection will increase competition in the special access and private line markets, thus benefitting end users. The four large LECs do not oppose expanded interconnection or the granting of ICI's Petition provided that the Commission allows the LECs additional flexibility to compete effectively with AAVs. The small LECs argue that the Commission should not impose expanded interconnection on them. In Issue 7, staff recommended that the Commission not mandate any form of expanded interconnection on non-Tier 1 LECs. However, if a small LEC receives a bona fide request for expanded interconnection and the terms and conditions cannot be negotiated by the parties, then the Commission should review such requests on a case-by-case

basis. (Issue 7)

Staff agrees with Southern Bell that the appropriate way to approach ICI's Petition would be to consider the Petition as subsumed within the other issues considered in this docket. The Commission's rulings on Issue 1-20 should apply equally to all interested parties, or to anyone else affected by expanded interconnection, including ICI.

If the Commission finds expanded interconnection to be in the public interest in Issue 1, staff recommends that the Commission grant ICI's Petition subject to the Commission's rulings on the other issues. However, if the Commission does not find expanded interconnection to be in the public interest, there is no evidence to support treating ICI differently from any other AAV or party affected by expanded interconnection. In such circumstances, staff would recommend that the Commission deny ICI's Petition.