

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE: Petition for expanded interconnection for alternate
access vendors within local exchange company central
offices by INTERMEDIA COMMUNICATIONS OF FLORIDA,
INC. (Deferred from 1/18/94 Commission Conference.)

DOCKET NO. 921074-TP

COPY

BEFORE: COMMISSIONER SUSAN F. CLARK
COMMISSIONER LUIS J. LAUREDO
COMMISSIONER JULIA L. JOHNSON

PROCEEDING: AGENDA CONFERENCE

ITEM NUMBER: 33

DATE: Tuesday, February 1, 1994

PLACE: 106 Fletcher Building
Tallahassee, Florida

REPORTED BY: JANE FAUROT
Notary Public in and for the
State of Florida at Large

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STAFF RECOMMENDATIONS

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

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

Issue 2: How does the FCC's order on expanded interconnection impact the Commission's ability to impose forms and conditions of expanded interconnection that are different from those imposed by the FCC's order?

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. (This stipulation was approved at the September 13, 1993 hearing. Therefore, this issue is resolved.)

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

Stipulation: By agreement of the parties, Issue 3 is deleted from further consideration in this proceeding. (This stipulation was approved at the September 13, 1993 hearing. 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.

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.

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

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.

Issue 7: What LECs should provide expanded interconnection?

Recommendation: Only Tier 1 LECs (Southern Bell, GTEFL, United and Centel) should be required to offer expanded interconnection as a tariffed generally available service.

1 However, if a non-Tier 1 LEC receives a bona fide request
2 cannot be negotiated by the parties, then the Commission
3 should review each such request on a case-by-case basis. If
4 the parties agree on expanded interconnection, then the
5 terms and conditions would also be set by individual
6 negotiation.

7 Issue 8: Where should expanded interconnection be offered?

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

15 Issue 9: Who should be allowed to interconnect?

16 Stipulation: Any entity should be allowed to interconnect,
17 on an intrastate basis, its own basic transmission
18 facilities associated with terminating equipment and
19 multiplexers, except entities restricted pursuant to
20 Commission rules and regulations. (This stipulation was
21 approved at the September 13, 1993 hearing. Therefore, this
22 issue is resolved.)

23 Issue 10: Should the same terms and conditions of expanded
24 interconnection apply to ATT-C as apply to other
25 interconnectors?

26 Stipulation: ATT-C should be allowed to interconnect
27 intrastate Special Access Arrangements to the same extent as
28 other parties, subject to the requirements adopted by the
29 FCC in CC Docket 91-141, regarding preexisting collocated
30 facilities. (This stipulation was approved at the September
31 13, 1993 hearing. Therefore, this issue is resolved.)

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

35 Recommendation: Yes. In addition to the standards
discussed in Issues 8, 13 and 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
nondiscriminatory 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

1 points of entry to a central office whenever there are
2 at least two entry points for LEC cable.

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

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

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

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

15 Recommendation:

16 Allocation of Space: Central office space should be
17 allocated to interconnectors on a first-come, first-served
18 basis and, when central office space is exhausted, the LEC
19 should be required to offer virtual collocation.

20 Space Availability: If the LECs file for exemptions from
21 physical collocation for central offices in Florida, then
22 they must provide the same type of information to this
23 Commission as was provided to the FCC in order for a
24 decision to be made. The Commission should use the
25 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: 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: LECs should 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: 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,

1 a space in the equipment rack would be left vacant between
2 each collocator. If there is not sufficient space to
3 implement such a policy in certain central offices, the LEC
4 should request exemption for these central offices at the
5 same time and in the same manner as it would request an
6 exemption from offering physical collocation in central
7 offices. As space becomes exhausted in the central office,
8 the LEC may begin to place new interconnectors in the
9 in-between places.

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

Recommendation: Yes. The Commission should allow expanded
11 interconnection of non-fiber optic technology on a central
12 office basis where facilities permit. Further, the actual
13 location of microwave technology should not be mandated, but
14 should be negotiated between the parties.

Issue 15: If the Commission permits expanded
15 interconnection, what pricing flexibility should the LECs be
16 granted for special access and private line services?

Primary Recommendation: The LECs should be granted
17 "zone-pricing" flexibility on a conceptual basis under the
18 guidelines established by the FCC in Order No. 92-440, CC
19 Docket No. 91-141. This arrangement allows for the
20 establishment of 3 density pricing zones, requiring that
21 rates be averaged within each zone but allowing that rates
22 may differ between pricing zones. The LECs should be
23 required to submit their Zone Density Pricing Plans and
24 accompanying zone-pricing tariff proposals, with cost data
25 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 Services 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.

Issue 16: If the Commission permits collocation, what

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

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

Further, staff recommends that the Commission
 require the LECs to tariff expanded interconnection at the
 DSO 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, customers
 with LEC special access services with terms equal to or
 greater than 3 years, entered into on or before January 18,
 1994 should 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, the Commission should deny Teleport's and
 Sprint's proposals to handle the local transport for
 switched access through expanded interconnection.

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

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.

Issue 18: What separations impact will expanded
 interconnection have on the LEC?

1 Recommendation: Expanded interconnection will not have any
2 material impact on separations. Migration will have an
3 impact on separations, but is not measurable at this time.
4 Issue 19: Should expanded interconnection be subject to a
5 "net revenue test" requirement in order to avoid possible
6 cross-subsidy concerns?
7 Stipulation: Issue 19 is deleted from further consideration
8 in this proceeding. (This stipulation was approved at the
9 September 13, 1993 hearing. Therefore, this issue is
10 resolved.L)
11 Issue 20: How would ratepayers be financially affected by
12 expanded interconnection?
13 Recommendation: Ratepayers who receive the benefit of
14 competition in special access and private line services will
15 enjoy improved services at reduced prices. The competition
16 and increased pricing flexibility as enjoyed in interstate
17 operations will put a slight upward pressure on other
18 services.
19 Issue 21: Should the Commission grant Intermedia
20 Communications of Florida, Inc.'s petition?
21 Recommendation: Yes. If the Commission finds expanded
22 interconnection for special access and private line to be in
23 the public interest, the Commission should grant
24 Intermedia's petition under the terms and conditions set
25 forth in the previous issues. However, if the Commission
does not find expanded interconnection to be in the public
interest, Intermedia should not be treated any differently
than any other AAV and the Commission should deny the
petition.

P R O C E E D I N G S

1
2 COMMISSIONER CLARK: Item 33.

3 Commissioners, what do you want to do? Do you want
4 to go issue-by-issue?

5 COMMISSIONER JOHNSON: Yes.

6 COMMISSIONER CLARK: Okay. Issue Number 1.

7 MR. McCABE: Commissioners, in Issue 1, Staff
8 recommends that the Commission find expanded
9 interconnection to be in the public interest.

10 COMMISSIONER LAUREDO: I move Staff.

11 COMMISSIONER JOHNSON: Second.

12 COMMISSIONER CLARK: Without objection, Issue 1 is
13 approved.

14 Issue 2. That's stipulated.

15 MR. McCABE: Yes.

16 COMMISSIONER CLARK: All right. So, we need to
17 approve the stipulation.

18 COMMISSIONER LAUREDO: I move the stipulation.

19 MR. MURPHY: The stipulations were approved at the
20 hearing.

21 COMMISSIONER CLARK: Okay.

22 COMMISSIONER LAUREDO: So, 2 and 3 are not -- why
23 don't we move them just in case. I move 2 and 3.

24 COMMISSIONER JOHNSON: Second.

25 MR. MURPHY: Issue 4, the parties and Staff agree

1 that expanded interconnection is allowable --
2 permissible by 364, Florida Statutes.

3 COMMISSIONER LAUREDO: I'm sorry, Issue 4? You
4 guys had better speak up. I'm having a hard time
5 hearing.

6 MR. MURPHY: The parties and Staff -- the parties
7 agree and Staff recommends that the Commission has the
8 authority pursuant to Chapter 364, Florida Statutes, to
9 mandate expanded interconnection.

10 COMMISSIONER JOHNSON: Move it.

11 COMMISSIONER CLARK: Issue 5.

12 MR. MURPHY: Staff recommends that a mandate of
13 physical collocation violates neither the Florida nor
14 the U.S. Constitution. Consistent with the
15 determination made by the FCC, Staff believes that
16 rather than being a taking, a mandate of physical
17 collocation is simply statutorily authorized regulation
18 of local exchange company's facilities which have been
19 dedicated for the purpose of providing
20 telecommunication service.

21 COMMISSIONER JOHNSON: Move it.

22 COMMISSIONER LAUREDO: I have a problem with Issue
23 5. And I enjoyed tremendously reading all this
24 constitutional law. And it only brought to mind that
25 I, again, do not want to be a judge. And it doesn't

1 seem to me appropriate, although I know Staff's answer
2 already, that we take, basically, a constitutional
3 stand when the other agency of the federal government
4 has acted along parallel lines, is being challenged in
5 a court of jurisdiction, and we act as we know the law
6 to be. And if it turns out that a court decides that
7 what we did is incorrect constitutionally, then let
8 that happen then, not do it now. I think if we judge
9 -- I'm not competent to make -- I'm not competent to
10 make a constitutional issue of what it entails, nor do
11 I see what is the relevancy of it here. So, I think we
12 should avoid this issue altogether. It can be used by
13 parties one side or the other, and it doesn't lend to
14 the thrust of it.

15 COMMISSIONER JOHNSON: Could we start by
16 addressing his concerns? I think the first concern was
17 the relevancy. What would be -- because the
18 Commissioner does feel uncomfortable with us answering
19 the question, I guess the first thing I want to know is
20 what is the relevance of this issue? Do we need to
21 decide it, and if so --

22 MR. MURPHY: Well, it has been raised as an issue
23 in this proceeding. And I think every decision you
24 make you have to make a good faith effort to know if it
25 is legal and if it's constitutional. And the fact that

1 it has been raised, I think it is incumbent upon the
2 agency to make the decision.

3 COMMISSIONER JOHNSON: So, the parties have raised
4 this as an issue -- a threshold issue that we need to
5 address.

6 MR. MURPHY: Yes, Commissioner.

7 COMMISSIONER LAUREDO: I think this implied that
8 all we do here, or from your guidance, is legal. And
9 there is nothing more relevant to me in this particular
10 issue than the action of the FCC, and the fact that it
11 is being challenged in court. I am not competent to
12 make a constitutional ruling. That court is taking its
13 time about it, and I really don't think it's relevant.
14 I mean, I think you're acting out of an abundance of
15 caution. I think it's too much abundance of caution.
16 I think we should move forward as we interpret the laws
17 and regulations. Like all regulatory bodies, like all
18 citizens, like all legislative bodies, when their laws
19 that they write are -- I don't think we have any
20 business getting into constitutional law. I really
21 don't.

22 MR. MURPHY: Implicitly, then, by not voting
23 you're presuming that it is constitutional if you do,
24 then, require physical --

25 COMMISSIONER LAUREDO: Let them make whatever

1 conclusions they want to from our being quiet. I think
2 we should have -- I mean, judicial caution in our
3 quasi-judicial functions. I don't think we need to get
4 so far off that we are making -- I mean, reading this
5 stuff, I mean, it's really nifty stuff, you know.
6 Reading all of this constitutional law stuff, I have to
7 remind myself I'm a Public Service Commissioner. I was
8 not picked to be a constitutional lawyer or judge. I
9 mean, I am being a little facetious, but I think that
10 sometimes -- and I know exactly what you're trying to
11 accomplish, but the mere issue that somebody raises an
12 issue does not necessarily shift the burden to us to do
13 something other than our functions as delegated by the
14 Legislature. And I can tell you that my reading of
15 those duties by the Legislature, that nowhere in it do
16 I read that I need to make constitutionality decisions,
17 particularly when I don't have to do it.

18 COMMISSIONER CLARK: Mr. Pruitt?

19 MR. PRUITT: Commissioners do not have the
20 authority to declare a statute or a law
21 unconstitutional.

22 MR. MURPHY: Which is not the case in this
23 instance. This is whether or not an action by the
24 Commission is constitutional.

25 COMMISSIONER CLARK: Mr. Pruitt, the issue is

1 framed whether or not we can order a telephone company
2 to allow another entity to come onto its premises and
3 establish some facilities on that premise, if that
4 constitutes a taking of the utility's property.

5 MR. PRUITT: This Commission would not have the
6 authority or the jurisdiction to determine that
7 question. You can order them to do it, and a court of
8 competent jurisdiction can tell you whether you're
9 right or wrong.

10 COMMISSIONER LAUREDO: And let me tell you another
11 side of it. This can open a whole Pandora's Box. I
12 mean, every single one of our decisions can be
13 challenged, theoretically, if you want to be radical
14 about it. Somebody raises an issue, and we are
15 immediately put in the presumption of testing the
16 constitutionality of each one of our actions.

17 COMMISSIONER CLARK: Let me ask the question a
18 little differently. We take an oath of office that
19 requires us to uphold the statutes and the constitution
20 of the State of Florida. Does that in any way require
21 us -- recognizing that we aren't the final
22 decision-makers, does that require us to make a good
23 faith effort to determine whether or not an action we
24 propose to take in our own mind may be
25 unconstitutional. And if we conclude it is, not take

1 that action?

2 MR. PRUITT: I think you should be aware of that,
3 but I don't believe that you have the authority to go
4 out and start ruling on constitutional issues.

5 COMMISSIONER CLARK: I would agree that we aren't
6 the final word in that case. But I'm comfortable
7 noting that whether or not it raises federal or state
8 -- it may raise a federal or state constitutional
9 question. But in my own mind, I don't -- I believe
10 that it's within our jurisdiction and our grant of
11 authority to require the physical collocation. And
12 maybe you can just state the issue that way. Avoid the
13 taking or confiscation of property, and state it
14 affirmatively, that we believe it's within our
15 regulatory authority to require the physical
16 collocation.

17 COMMISSIONER LAUREDO: I mean, our actions speak
18 for themselves. If we order them to do something --

19 COMMISSIONER CLARK: Would that answer the
20 question? I mean, that's the other side of the coin.

21 MR. MURPHY: This is what I was saying.
22 Implicitly, by doing that, you're saying that you
23 believe it to be permissible.

24 COMMISSIONER JOHNSON: But that does answer the
25 question.

1 MR. MURPHY: Would that require a vote that you
2 modify somehow this issue and that is how you answer
3 it?

4 COMMISSIONER CLARK: I'm struggling with a dilemma
5 here because I know the courts have stated that hearing
6 officers don't have the ability to determine whether a
7 rule an agency has is unconstitutional, but they can
8 make a determination on a proposed rule. They can, at
9 least, make an initial determination that it is or
10 isn't constitutional. At least that is the way it used
11 to be. So, it would seem to me if they can make that
12 determination, the agency can, likewise, make that
13 determination.

14 MR. MURPHY: I would think so.

15 COMMISSIONER CLARK: Recognizing we are not the
16 final say.

17 MR. MURPHY: I think this is quite different from
18 making a constitutional interpretation of a statute or
19 rule, whether or not it is constitutional or not. This
20 is whether or not an act that you may mandate or a
21 circumstance which you may mandate. And one of the
22 parties has said, "No, don't do this to me. You're
23 violating my constitutional rights." I think it is a
24 threshold issue, and I think it's different from
25 interpreting a statute, whether or not a statute would

1 be constitutional.

2 COMMISSIONER LAUREDO: Does that party have other
3 venues, more appropriate venues, under the U.S.
4 Constitution to address those concerns than a
5 regulatory body that is not a judicial body?

6 MR. MURPHY: On appeal they can appeal your
7 decision.

8 COMMISSIONER CLARK: I mean, this is no -- this
9 does not preclude them from getting a resolution of
10 that issue.

11 COMMISSIONER LAUREDO: In fact, isn't there a
12 parallel track, reality check here that exactly the
13 same thing was done by the FCC is now in the District
14 Court or the Court of Appeals?

15 MR. MURPHY: The FCC did --

16 COMMISSIONER LAUREDO: Well, what business do we
17 have trying to make constitutional law on something as
18 fundamental as rights of private property?

19 COMMISSIONER CLARK: Well, I think you have a
20 fundamental responsibility to uphold the Constitution
21 of Florida.

22 COMMISSIONER LAUREDO: And I absolutely do.

23 COMMISSIONER CLARK: -- and that is what your oath
24 is. And if you think it's going to violate the
25 constitution, you had better not do it.

1 COMMISSIONER LAUREDO: You're twisting my argument
2 around. If you accept that, the premise of that
3 argument, then every single one of our votes here we
4 have to preamble them by saying, "I hereby swear that I
5 believe this vote on Item 17 is constitutional."

6 MR. MURPHY: I think that's implicit in your
7 votes.

8 COMMISSIONER LAUREDO: Absolutely, so let's move
9 on. Just because a party raised it, you're shifting
10 the burden to us to deal with it very -- I think it's a
11 very interesting case, and a lot of interesting case
12 law that you made us read over the weekend. But I'm
13 not competent to do that. And I feel comfortable that
14 there is enough and sufficient remedies outside of this
15 Commission to deal with that.

16 MR. MURPHY: Would a concurring opinion help you
17 in that regard?

18 COMMISSIONER LAUREDO: I feel very strongly about
19 it. I mean, concurring, whatever -- I mean, I respect
20 and I know where you're coming from in trying to state
21 the obvious, but I think you don't need to state the
22 obvious. I think we all are acting under a lawful --
23 our actions are inherently always lawful, both under
24 our oath and under our functions. It's a very fine
25 point that's being addressed by a court of competent

1 jurisdiction. We make a statement -- I don't see the
2 relevancy of it, really, to be honest with you. And I
3 feel very uncomfortable stepping into that. If it was
4 critical to make this move forward, I would, but I
5 don't see that it lends anything to it. And if parties
6 don't like our things, they're going to appeal it.

7 COMMISSIONER JOHNSON: Let me go back to the
8 original question of -- the Commissioner does raise a
9 legitimate question. I think every time we rule on a
10 case, we are making some implicit determinations as to
11 the constitutionality or our authority to make those
12 rulings. So, in that vein, what does this add?

13 MR. MURPHY: In this case a party has said we have
14 very strong concerns in this regard. And I think it
15 warrants a Commission vote. Someone has raised it as
16 an issue.

17 COMMISSIONER CLARK: How about this, can't we say
18 that we have concluded that it is within our regulatory
19 jurisdiction to mandate physical collocation? And a
20 party has requested that we rule on the
21 constitutionality of it. It appears the questions of
22 constitutionality do lie with courts. But our action
23 would indicate that we believe that it is within the
24 statutory ground of authority. I don't think that gets
25 -- you know, it still boils down to --

1 COMMISSIONER JOHNSON: We have answered the
2 question by our actions.

3 COMMISSIONER CLARK: We've answered the question.
4 We might as well just answer it straight out.

5 COMMISSIONER JOHNSON: I'm going to move Issue 5.

6 COMMISSIONER LAUREDO: I'm sorry?

7 COMMISSIONER CLARK: She's moved Issue 5. I
8 second it.

9 COMMISSIONER LAUREDO: There's a motion to accept
10 Staff's recommendation on Issue 5 and duly seconded.
11 All those in favor, signify by saying "aye."

12 COMMISSIONER CLARK: Aye.

13 COMMISSIONER JOHNSON: Aye.

14 COMMISSIONER LAUREDO: All those opposed? Nay.

15 MR. MURPHY: Thank you.

16 MR. REITH: Commissioners, in Issue 6, the Staff
17 is recommending that the Commission require the LECs to
18 provide physical collocation to all interconnectors
19 upon request.

20 COMMISSIONER CLARK: Is there a motion?

21 COMMISSIONER JOHNSON: Move it.

22 COMMISSIONER CLARK: Without objection, Item 6 is
23 approved.

24 Item 7.

25 MR. CHASE: Commissioners, Staff is recommending

1 that only Tier 1 LECs should be required to offer
2 expanded interconnection.

3 COMMISSIONER LAUREDO: I move it.

4 COMMISSIONER JOHNSON: Second.

5 COMMISSIONER CLARK: Without objection, Issue 8 is
6 approved.

7 MR. CHASE: Seven.

8 COMMISSIONER CLARK: Seven.

9 Issue 8.

10 MR. REITH: Commissioners, I have a correction to
11 make in Issue 8. In the first sentence of the Staff
12 recommendation I'd like to strike the word "all," and
13 have it read, "Should be offered out of LEC central
14 offices."

15 COMMISSIONER JOHNSON: What is the relevance of
16 that?

17 MR. REITH: Originally my thought was this issue
18 you have to look at all the possible candidates of
19 where interconnection could be offered out of what
20 facility. And instead of saying all LEC central
21 offices, I wanted to form a universe of possible ones.
22 And then from them you pick. So, it's syntax, maybe,
23 but it takes away some confusion.

24 COMMISSIONER CLARK: Where is your change?

25 MR. REITH: In Staff's recommendation, the first

1 sentence reads: "Expanded interconnection should be
2 offered out of all LEC central offices." I'd like to
3 cross out the word "all," and just say, "out of LEC
4 central offices."

5 COMMISSIONER CLARK: Somewhere in the
6 recommendation is that it should follow the same
7 central offices that was being done for interstate.

8 MR. REITH: Yes, ma'am.

9 COMMISSIONER CLARK: Okay.

10 COMMISSIONER JOHNSON: Move it as amended.

11 COMMISSIONER CLARK: Without objection, Issue 8 is
12 approved.

13 Issue 9.

14 COMMISSIONER JOHNSON: Move the stipulation.

15 COMMISSIONER CLARK: Without objection.

16 Issue 10.

17 COMMISSIONER JOHNSON: Move the stipulation.

18 COMMISSIONER CLARK: Without objection, Issue 10
19 is approved.

20 MR. REITH: Commissioners, in Issue 11, Staff is
21 recommending certain standards be accepted in beginning
22 the interconnection. One of them is that the LECs
23 should provide at least two separate entrances for
24 facilities where they have more than one. I'm also
25 asking that you have point or points that are as close

1 as reasonably possible to the central office for
2 interconnectors to bring in their facilities. And a
3 third is that the interconnection equipment should
4 apply only to those facilities needed to terminate
5 transmission.

6 COMMISSIONER LAUREDO: What happens, if I could
7 ask, when we have this discussion on the security
8 issue? Is that something we work out later after we
9 make --

10 MR. REITH: The security issue was brought up in
11 Issue 6, and that is where some of the LECs, GTE in
12 particular, felt security and interruptions by
13 personnel other than their own in the central office
14 would cause undue harm to them. The reasoning that
15 Staff came around was that being that this is already
16 mandated, physical collocation in the interstate,
17 you're going to have those interruptions --

18 COMMISSIONER LAUREDO: Well, that's not my
19 question.

20 MR. REITH: Okay.

21 COMMISSIONER LAUREDO: I crossed that bridge
22 already on 6. We decided for physical collocation.
23 But we still -- that is still a legitimate problem.
24 Somebody wanted to take that legitimate problem and try
25 to persuade me not to vote one way. I've already voted

1 the other way. But, still, the idea of somebody other
2 than your employees being around your office is still a
3 problem. My question is, is that something we will
4 look at later as we implement this, that Staff will
5 look at?

6 MR. REITH: Definitely.

7 COMMISSIONER LAUREDO: Or it would be on a
8 complaint basis or something?

9 MR. McCABE: I would expect that in the tariff
10 filings under terms and conditions there would probably
11 be something in terms of how they would enter into the
12 facilities. And it may be that they are required to
13 have an escort or something of that nature.

14 COMMISSIONER LAUREDO: And vice versa, I also want
15 to make sure the AAVs, security of their equipment is
16 -- I mean it is not -- I think it was a legitimate
17 point. It didn't have enough weight to sway, but I
18 think it's a practical --

19 MR. REITH: Yes.

20 COMMISSIONER CLARK: Without objection, Issue 11
21 is approved.

22 COMMISSIONER LAUREDO: By the way, that two
23 entrances on Issue 11 -- that whole thought came up.
24 You mean physical entrances into the CO?

25 MR. REITH: Yes.

1 COMMISSIONER LAUREDO: So, I mean, literally
2 doors?

3 MR. REITH: No, these would be entrances to pull
4 in facilities such as cable.

5 COMMISSIONER LAUREDO: Into the cable facility
6 itself, not the entry into the physical body --

7 MR. REITH: Correct.

8 COMMISSIONER LAUREDO: -- of the building.

9 MR. REITH: Correct.

10 COMMISSIONER CLARK: Issue 12.

11 COMMISSIONER JOHNSON: Move it.

12 COMMISSIONER CLARK: Without objection.

13 We're going to see what happens, right?

14 MR. REITH: Yes.

15 COMMISSIONER CLARK: Okay. If ICI makes good on
16 its promise to provide reciprocal service --

17 MR. REITH: We'll allow GTE to interconnect.

18 COMMISSIONER LAUREDO: Could you explain to me the
19 reasoning behind your recommendation on 12? It seems
20 to me that if you want to be fair -- you know, it's
21 like you want competition, let's have competition, or
22 if you can't have --

23 MR. REITH: One of the -- with reciprocal
24 interconnection -- the LECs, originally this docket was
25 created to allow people into the LEC central offices,

1 because they were the dominant provider. They were the
2 one that owned everything. One of the things I based
3 my recommendation on is you're talking about some
4 people, the interconnectors that are trying to get a
5 niche into the market, so it would benefit them to take
6 on whatever comes they can that would like to purchase
7 access to their facilities. So, I didn't think that
8 there was enough need there to mandate that the
9 interconnectors be forced to allow the LEC to
10 interconnect with their networks. They would want
11 those revenues, so they would, in turn, voluntarily go
12 ahead and say, "Okay, we'll go ahead and allow you."

13 COMMISSIONER LAUREDO: So, in other words, you
14 wouldn't be too upset if the recommendation was yes,
15 then?

16 MR. REITH: Well, part of it has to do with
17 symmetrical treatment. I mean, the market is really
18 not symmetrical, either. So, there is (simultaneous
19 conversation) effects out there already.

20 COMMISSIONER LAUREDO: Do you think that the
21 market and the market conditions, and even the
22 regulatory conditions, when we started this docket and
23 the information we gathered is the same as it is today,
24 the day we're voting and the players are the same,
25 conditions are the same?

1 MR. REITH: Could you ask that again?

2 COMMISSIONER LAUREDO: Yes. Do you think that in
3 the time we started this proceeding, including the time
4 we had the hearings, and whatever, that the market and
5 the players, and even some of the regulatory ambiance,
6 both immediate and immediately within the next 30 to 40
7 days are different or the same as when we started this
8 docket?

9 MR. REITH: I think we have the same ones plus
10 some more. I'm not sure I understand about how they --

11 COMMISSIONER LAUREDO: I'm just thinking that
12 Number 12 -- I'm trying to struggle with the idea of
13 competition, and I struggle with it -- to me you're
14 either for deregulation, or you're for competition or
15 you're not. We have been kind of, you know, a little
16 bit here, a little bit there. We haven't been very
17 noncommittal. I accept that when there is -- and
18 that's your argument, disparity of strength. And we
19 have another issue I want to ask you about. You know,
20 we don't -- you can't have real true open competition
21 when you have a gorilla against -- okay. But, now, my
22 question is that would have been true a year ago, when
23 we started this. Do you think the players that are
24 going to get into this business, CAP or AAV are the
25 same? In other words, aren't there other gorillas out

1 there right now that --

2 MR. REITH: I don't think so, not in Florida. I
3 don't think there is in the United States. I mean,
4 you're talking about somebody that's big enough to go
5 ahead and has the power of a LEC, has the traffic of a
6 LEC.

7 COMMISSIONER LAUREDO: You don't see a Time Warner
8 or a TCI, Bell Atlantic as --

9 MR. REITH: That's something that I would like to
10 see evolve. I mean, it's something that's coming.

11 MR. McCABE: Yes, at some point in time I would
12 imagine that will emerge. But even that, even like a
13 Bell Atlantic/TCI merger, just the merger alone is
14 probably going to take about two years. So, in terms
15 of their planning and things of that nature, it will be
16 quite some time before you would have even intense --

17 COMMISSIONER LAUREDO: So, you're not against --
18 you're not against it philosophically, you just kind of
19 -- you think you need a transition period to make sure
20 that the market forces are more equal. Is that the
21 gist of it?

22 MR. McCABE: Yes.

23 COMMISSIONER LAUREDO: Okay. I just wanted to get
24 it on the record and see where we will be six months
25 from now.

1 COMMISSIONER CLARK: It's your view it's unneeded
2 because it will be in their own best interest to
3 provide the interconnection. It is more revenue to
4 them.

5 MR. REITH: Yes.

6 COMMISSIONER JOHNSON: Move it.

7 COMMISSIONER CLARK: Issue 13. We were just on
8 12, right?

9 COMMISSION STAFF: Right.

10 COMMISSIONER CLARK: Without objection, 12 is
11 approved.

12 Issue 13.

13 MR. CHASE: Commissioners, Issue 13 deals with
14 standards for floor space.

15 COMMISSIONER LAUREDO: I move 13.

16 COMMISSIONER CLARK: Without objection, 13 is
17 approved.

18 Issue 14.

19 MR. REITH: Commissioners, Issue 14 recommends
20 expanded interconnection for non-fiberoptic technology
21 be permitted, and that we also recommend that actual
22 location of microwave technology not be mandated, but
23 negotiated between the parties.

24 COMMISSIONER JOHNSON: Move it.

25 COMMISSIONER CLARK: Without objection, Issue 14

1 is approved.

2 Issue 15.

3 MR. YATES: Commissioners, Issue 15, which deals
4 with granting the LECs additional pricing flexibility,
5 we have given you a primary recommendation and an
6 alternative recommendation. I'd just like to briefly
7 comment that in our primary we had recommended that the
8 LECs be required to submit their Zone Density Pricing
9 Plans and tariff proposals within 60 days of the order.
10 We had initially planned to bring this recommendation
11 to you much earlier, plus the fact that we have a Phase
12 II hearing that's coming up in August and the parties
13 will have to file testimony in May, so we would like to
14 amend the primary recommendation from 60 days to show a
15 date of March 31 --

16 COMMISSIONER LAUREDO: Wait a minute.

17 MR. YATES: -- for the LECs to file those zone
18 density plans --

19 COMMISSIONER LAUREDO: March?

20 MR. YATES: March 31st. -- the tariff proposals
21 and also the comments that we requested on their
22 efforts to improve their CSA procedures.

23 Also, on the alternative recommendation, we put
24 that in there because we want you to understand that
25 the same problems that were identified in testimony

1 about the burdensome use of the CSAs were brought up in
2 a docket approximately three years ago. And at that
3 time the Commission vote was that the LECs make an
4 attempt to streamline those. We saw no testimony where
5 those efforts have been put forward. But in
6 recommending, we want to stress that we believe the
7 primary recommendation is the way to go, but we also
8 want to point out that we are recommending the Zone
9 Pricing flexibility on a conceptual basis, and that the
10 individual plans would be reviewed as they are filed.
11 This will also, by moving up the date, give the parties
12 in Phase II an opportunity to look at that as an issue,
13 if it appears it is warranted.

14 COMMISSIONER LAUREDO: I move primary as amended.

15 COMMISSIONER JOHNSON: Second.

16 COMMISSIONER CLARK: Without objection, primary is
17 approved.

18 Issue 16.

19 MR. CHASE: Commissioners, I have a couple of
20 corrections to the recommendation in Issue 16. We
21 would like to add the phrase at the very beginning of
22 the recommendation statement, which would read, "With
23 the exception of the standards, terms and conditions
24 adopted in previous issues that are different than what
25 the FCC ordered" comma. This is because we're

1 recommending that they initially mirror, but we have
2 recommended some things that are different, so --

3 COMMISSIONER CLARK: As amended, Issue 16.

4 MR. CHASE: Also, in addition, the third paragraph
5 of the recommendation statement we need to add a
6 sentence to the end of that that reads: "In addition,
7 the standards established in Issues 8, 11, and 14
8 should be included in the LECs tariffs."

9 MR. McCABE: And there is one more change. In the
10 fourth paragraph, regarding the fresh look proposal, it
11 said, "Entered into on or before January 18th, 1994."
12 That should now be February 1st.

13 COMMISSIONER LAUREDO: We deferred this from
14 the last --

15 MR. McCABE: Yes, from the Southern --

16 COMMISSIONER LAUREDO: -- one when we were
17 completely mentally exhausted, right?

18 MR. McCABE: No, we deferred it beforehand when
19 Southern Bell was --

20 COMMISSIONER JOHNSON: Move it.

21 COMMISSIONER CLARK: Issue 16 as amended, without
22 objection.

23 Issue 17.

24 COMMISSIONER JOHNSON: Move it.

25 MR. YATES: Commissioners, Issue 17 deals with the

1 requirement should all special access and private line
2 providers be required to file tariffs. Staff is
3 recommending no, and we believe this is consistent with
4 the position we have taken with AAVs in the past.

5 COMMISSIONER CLARK: We are going to see if it
6 works, right?

7 MR. YATES: We are going to see if it works.

8 COMMISSIONER CLARK: And as I understand it,
9 Southern Bell believes that is the way to go. They
10 don't want to see tariffs, but --

11 MR. YATES: They would like to see less regulation
12 instead of more in this case.

13 COMMISSIONER CLARK: Okay. Without objection
14 Issue 17 is approved.

15 Issue 18.

16 MR. DAVIS: Issue 18 dealt with the separations
17 aspect of the interconnection and none of the parties
18 really brought any problems to us. There will be some
19 cost shifting as mentioned in the later issue about the
20 revenues.

21 COMMISSIONER CLARK: Issue 18, without objection.

22 Issue 19 is deleted, so we approve the stipulation
23 deleting it. Without objection.

24 Issue 20.

25 COMMISSIONER LAUREDO: Issue 20, it's one of those

1 issues that I -- it's almost like the constitutional
2 issue, I don't know why we need to address this since
3 we don't know. And the last sentence is particularly
4 frightening, "The competition and increased pricing
5 flexibility as enjoyed in interstate operations will
6 put slight upward pressure on other services." I mean,
7 do we have to make the -- do we have to deal with Issue
8 20? Do we know for a fact how ratepayers will be
9 financially affected by expanded interconnection? Does
10 anybody in this room know?

11 COMMISSIONER CLARK: I think a fair statement is
12 the financial impact is uncertain. Our conclusion that
13 there won't be significant dislocation to residential
14 ratepayers through the implementation of this service,
15 while at the same time providing competition in special
16 access and private line services, which should result
17 in improved services at reduced prices.

18 COMMISSIONER LAUREDO: Where do you read that?

19 COMMISSIONER CLARK: I'm making it up.

20 COMMISSIONER LAUREDO: Oh. Because what I read
21 gives me -- obviously the last sentence --

22 COMMISSIONER CLARK: I'm not making it up in the
23 sense that it's not true.

24 COMMISSIONER LAUREDO: No, I know what you meant.
25 I'm just voting on the actual language. And the

1 language gives me a lot of --

2 COMMISSIONER CLARK: And I share your concern.

3 COMMISSIONER LAUREDO: And I happen to think that
4 as I struggle with this whole thing of competition, you
5 know, this is it, this is the issue that concerns me
6 the most. What is going to happen to other people's --
7 you know, I keep saying the little old lady's in St.
8 Petersburg rate, and this is a more -- a very elegant
9 way of stating that problem. I don't know the answer.
10 I hope, and I'm putting my vote on the faith that it
11 will be, in fact, what you were saying.

12 COMMISSIONER CLARK: We don't have any indication
13 of any substantial negative impact to residential
14 ratepayers, and we expect it to have a positive impact
15 on special access and private line customers.

16 COMMISSIONER LAUREDO: But it says the opposite,
17 Commissioner. It says the competition will put slight
18 upward pressure on other services. That's what the
19 worst --

20 COMMISSIONER CLARK: But I'm saying that we don't
21 expect a substantial impact on residential rates.
22 Moreover, there isn't going to be an impact in Southern
23 Bell because of the stipulation. They can't raise
24 their local rates until when, 1997? If any, it's going
25 to be --

1 COMMISSIONER LAUREDO: Well, then why don't we
2 withdraw Issue 20? All I'm trying to do is avoid
3 deciding Issue 20. There are good points on both
4 sides, and I just wonder, again, what is the relevancy
5 of going on the record and saying, "Yes, it's not going
6 to impact on residential."

7 COMMISSIONER CLARK: Well, I think that the
8 statute, if not in a specific statute, at least in the
9 overall scheme, requires us to make a determination or
10 look at the impact of introducing competition to assure
11 ourselves that it will have a positive public benefit.
12 And I think that's what this is designed to get at.
13 But I have no objection to not voting on --

14 COMMISSIONER LAUREDO: I mean, we are all trying
15 something, the country is trying something new, the
16 Congress is going to change the rules. One of the
17 things that permeates this issue is the fact that we
18 are testing the waters. We are going to see how the
19 parties -- and then you're asking me to --

20 COMMISSIONER CLARK: Yes, but we can say based on
21 the facts in this record, we have no indication that
22 there will be a substantial negative impact on
23 residential or small business ratepayers. What we do
24 find is that we expect there to be more competition in
25 special access and private line service, which should

1 result in improved services at reasonable prices. We
2 recognize that increased price flexibility in
3 interstate operations may put slight pressure on other
4 services, but there is no -- we can make no finding
5 that it will, in fact, result in higher prices.

6 COMMISSIONER LAUREDO: The problem I'm having is
7 that I agree with what you're saying --

8 COMMISSIONER JOHNSON: Move it as amended.

9 COMMISSIONER LAUREDO: -- but it's not what is in
10 the --

11 MR. MURPHY: We can get that from the tape and
12 reflect that in the order as a motion.

13 COMMISSIONER LAUREDO: Our intent is to make sure
14 it does not affect. And the best information we have
15 today gives us some degree of comfort, but our intent
16 should be clear. The way this reads, you know, I want
17 to have a positive concern of this Commission vis-a-vis
18 other users rather than the way it's worded. So, if
19 you can pick it up from the tape and change it, I will
20 be moving -- if you think it's important to say it.

21 COMMISSIONER CLARK: I think it is important to
22 say it, because I think the Legislature is looking to
23 us to make that determination when we reduce our
24 regulation and open up the market.

25 COMMISSIONER LAUREDO: Okay.

1 COMMISSIONER CLARK: Do you think you have a clear
2 picture of how the issue, or at least the
3 recommendation with respect to that issue, should be
4 reworded?

5 MR. MURPHY: I think I can get it from the tape if
6 that was moved.

7 COMMISSIONER LAUREDO: Show it to me before it
8 goes final.

9 COMMISSIONER CLARK: Without objection, Issue 20
10 as amended is approved.

11 Item 21.

12 COMMISSIONER LAUREDO: And now why don't we just
13 deny the petition on 21. Create chaos.

14 COMMISSIONER CLARK: Without objection, Issue 21
15 is approved.

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA:

COUNTY OF LEON:

I, JANE FAUROT, Court Reporter and Notary Public
in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing proceedings
was taken before me at the time and place therein
designated; that my shorthand notes were thereafter
transcribed, via computer, under my supervision, and the
foregoing pages are a true and correct record of the
aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney, or counsel of any of the parties, nor
relative or employee of such attorney or counsel, or
financially interested in the foregoing action.

WITNESS MY HAND AND SEAL this, the 8th day of
February, A.D., 1994, IN THE CITY OF TALLAHASSEE, COUNTY OF
LEON, STATE OF FLORIDA.

COPY

JANE FAUROT, COURT REPORTER
310 East College Avenue
Tallahassee, Florida 32301
(904) 222-5508

My Commission Expires July 16, 1997

CERTIFICATE OF NOTARY1
2 STATE OF FLORIDA:3 COUNTY OF LEON:
45 I, B.J. QUINN, Notary Public in and for the State
6 of Florida at Large:7 DO HEREBY CERTIFY that the foregoing
8 deposition/hearing/trial was submitted to me by JANE FAUROT,
9 as a true and accurate transcript reported by this court
10 reporter at the time and place therein designated; and that
11 before testimony was taken, the witness was duly sworn.12 I FURTHER CERTIFY that I am not a relative,
13 employee, attorney, or counsel of any of the parties in this
14 litigation, nor interested in the financial outcome of such
15 litigation.16 Sworn to and subscribed before me this 8th day of
17 February, 1994 by JANE FAUROT, who is personally known to
18 me.19
20 COPY

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