



**FLORIDA CABLE TELEVISION ASSOCIATION, INC.**

P.O. BOX 10883, TALLAHASSEE, FLORIDA 32308, 904/881-1900

Florida Cable Television Assoc., Inc.

**STEVEN E. WILKERSON**  
President

**VIA HAND DELIVERY**

**ORIGINAL  
FILE COPY**

March 25, 1994

Mr. Steven C. Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 E. Gaines Street  
Tallahassee, FL 32399-0850

**RE: DOCKET NO. 921074-TP**

Dear Mr. Tribble:

Enclosed for filing in the above-referenced docket are an original and fifteen (15) copies of Florida Cable Television Association, Inc.'s (FCTA) Motion for Reconsideration and/or Clarification of Order No. PSC-94-0285-FOF-TP and FCTA's Request for Oral Argument. Copies have been served on the parties of record pursuant to the attached Certificate of Service.

Also enclosed is a copy of the Motion for Reconsideration and/or Clarification of Order No. PSC-94-0285-FOF-TP and Request for Oral Argument on 3-1/2" high density diskette generated on a DOS computer in WordPerfect 6.0 format.

ACK

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

APP

CAF  Thank you for your assistance in processing this filing.

CMU  Yours very truly,

CTR

EAG  *Steven E. Wilkerson*

LEG  *L.W.*  
Laura L. Wilson  
Regulatory Counsel

WIN

OFC  Enclosures

RCH

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

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OTH

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DOCUMENT NUMBER-DATE

**02853 MAR 25 94**

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for expanded  
interconnection for alternate access  
vendors within local exchange company  
central offices by INTERMEDIA  
COMMUNICATIONS OF FLORIDA, INC. )

Docket No. 921074-TP

ORIGINAL  
FILE COPY

Filed: March 25, 1994

**MOTION OF FLORIDA CABLE TELEVISION ASSOCIATION, INC.  
FOR RECONSIDERATION AND/OR CLARIFICATION OF  
ORDER NO. PSC-94-0285-FOF-TP**

The FLORIDA CABLE TELEVISION ASSOCIATION, INC. ("FCTA"), pursuant to Rule 25-22-060, Florida Administrative Code, respectfully submits this Motion to the Florida Public Service Commission ("Commission") to reconsider and/or clarify certain portions of Order No. PSC-94-0285-FOF-TP. As grounds therefor, FCTA states:

1. This Motion focuses upon the Commission's decision on price flexibility issues. By Final Order No. PSC-94-0285-FOF-TP (issued March 10, 1994), hereinafter referred to as the "Final Order", the Commission ordered inter alia that the LECs are 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. Final Order at 36. The LECs were also ordered to submit zone density pricing plans using FCC-approved (or pending) interstate zone density plans and tariffs as a guide, with variations and justifications where appropriate. Id. The LECs were further required to file the results of their efforts or plans to streamline the Contract Service Arrangement ("CSA") process. Id.

2. The purpose of reconsideration is to bring the Commission's attention to facts and issues it has failed to consider or overlooked in rendering its initial order. Diamond Cab Company of Miami v. King, 146 So.2d 889, 891 (Fla. 1962). In this instance, reconsideration is necessary because the Commission has failed to consider the proper rule of law to be applied to the evidence in this proceeding on price flexibility issues. By granting reconsideration the

DOCUMENT NUMBER-DATE

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Commission will ensure that the findings and conclusions of the Final Order do not depart from essential requirements of law.

3. The proper rule of law to be applied on price flexibility issues is found in the revised Chapter 364, Florida Statutes (1990). The provisions of Chapter 364 make clear that price flexibility can only be granted to services deemed by the Commission, pursuant to certain statutory criteria, to be subject to effective competition. The specific controlling provisions of law are as follows:

(1) Section 364.01(3): "The Commission shall exercise its exclusive jurisdiction in order to:

(e) recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications 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 telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis." [Emphasis supplied];

(2) Section 364.338(1): "It is the legislative intent that, where the Commission finds that a telecommunications service is effectively competitive, market conditions be allowed to set prices so long as predatory pricing is precluded, monopoly ratepayers be protected from paying excessive rates and charges, and both ratepayers and competitors be protected from regulated telecommunications services subsidizing competitive telecommunications services." [Emphasis supplied]; and

(3) Section 364.338(3)(a): "If the Commission determines, after notice and opportunity to be heard, that a service provided by a local exchange telecommunications company is subject to effective competition, the Commission may:

1. Exempt the service from some of the requirements of this chapter and prescribe different regulatory requirements than are otherwise prescribed for a monopoly service; or
2. Require that the competitive service be provided pursuant to a fully separated subsidiary or affiliate." [Emphasis supplied.]

4. CSA authority constitutes pricing flexibility under the above provisions of law. CSA authority for Private Line, Special Access facilities and WATS access lines was granted in 1984 as a means of giving the LECs contract price flexibility to respond to a competitive marketplace. Order Nos. 13603 and 13830 issued August 20, 1984 and November 5, 1984, respectively, in re: Southern Bell Telephone and Telegraph Company's Proposal for Contract Service Arrangements.

As the Commission has noted:

"Under the Contract Service Arrangements proposed by Southern Bell, the company will enter into and begin performance of the contract without the prior approval of the Commission. We agree with the Company that this will give it additional flexibility and allow it to respond more effectively to competitive conditions."

Order No. 13603 at 2. Contract price flexibility was approved in 1984 pursuant to the provisions of the former Chapter 364, Florida Statutes, and former Commission Rule 25-9.34(1), Florida Administrative Code. Id.

5. The provisions of the revised Chapter 364 do not permit contract price flexibility for monopoly services. Price flexibility can only be granted for a LEC service that is first deemed

subject to effective competition<sup>1</sup> pursuant to the specific criteria of Section 364.338(2)(a)-(g), Florida Statutes. The plain language and express wording of the above-quoted sections establish a balance allowing flexible pricing of a service found to be experiencing full competition so long as the Commission ensures that consumers and competitors are adequately protected. All LEC services, including private line and special access services, are currently monopoly services. None have been deemed effectively competitive by the Commission.<sup>2</sup> As a direct result, contract price flexibility, i.e. CSA authority, is inappropriate as a matter of law and all LEC services currently offered must be treated as fully regulated monopoly services until deemed by the Commission to be subject to effective competition.

6. The Final Order overlooks or fails to consider these new provisions of law and the balance created by the Legislature in the revised Chapter 364. The effect of the Final Order, is to permit contract price flexibility before a specific finding that private line and special access are effectively competitive. The Final Order would, in essence, permit price flexibility without the guaranteed statutory protections to consumers and competitors that were intended by the Legislature. Therefore, CSA authority must be discontinued until such time as the Commission

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1

In Order No. PSC-93-1105-FOF-TP issued July 28, 1993 in Docket No. 910757-TP, In re: Investigation into the Regulatory Safeguards Required to Prevent Cross-Subsidization by Telephone Companies, the Commission determined that the statutory terms "competitive," "subject to effective competition," and "effectively competitive" are used synonymously throughout Chapter 364 to describe services that the Commission affirmatively deems "effectively competitive" pursuant to Section 364.338(2)(a)-(g). The Commission also found that Chapter 364 only contemplates two types of LEC services: monopoly and effectively competitive. These issues are currently the subject of an appeal in Case No. 82,281 pending before the Florida Supreme Court.

2

In Docket No. 930046-TP, the Commission has initially identified five monopoly services, including private line, as candidates for a determination of effective competition. Order No. PSC-93-1768-FOF-TP issued December 9, 1993. No other formal action has been taken.

affirmatively finds a LEC service to be subject to effective competition pursuant to Section 364.338(2)(a)-(g), Florida Statutes.

7. Alternatively, FCTA submits that the language of the Final Order could be construed to mean that the Commission intended to address the issue of whether to continue use of CSAs for private line and special access in Phase II of this docket. The Final Order provides:

Accordingly, at the time they file their zone density pricing plans and tariffs, the LECs shall include comments regarding what has accomplished or will be accomplished to improve the CSA process .... We 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 shall be required to identify the variation and provide justification for the change. [Emphasis supplied.]

The FCC zone pricing flexibility concept does not include CSA authority. It appears that the Commission intends for the LECs to identify whether they intend to continue to use contract price flexibility and, if so, to justify its continued use since the FCC concept does not include CSA authority. FCTA requests that the Final Order be clarified to require the LECs to justify retention of CSA authority by first demonstrating that private line, special access and switched access services are subject to effective competition pursuant to Section 364.338(2)(a)-(g). Then, and only then, may the LECs seeking a deviation from FCC parameters through the retention of CSA authority justify such action within the context of their individual pricing plans and tariffs.

WHEREFORE, for the foregoing reasons, the FCTA requests that the Commission: (1) discontinue CSA authority for private line and special access service until such services are deemed effectively competitive pursuant to Section 364.338(2)(a)-(g); or, alternatively (2) clarify the Final Order to require the LECs to demonstrate that private line and special access services

are effectively competitive and, only then, to justify why deviation from FCC parameters through CSA authority should be granted.

Respectfully submitted

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by:



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Laura L. Wilson  
Regulatory Counsel

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Reconsideration and/or Clarification of Order No. PSC-94-0285-FOF-TP has been furnished by Hand Delivery (\*) and/or U.S. Mail on this 25th day of March, 1994 to the following parties of record:

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