

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

MEMORANDUM

April 21, 1994

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (MURPHY) *cm*
DIVISION OF COMMUNICATIONS (REIF, CHASE) *TR*
W *SC* *EW*

RE: DOCKET NO. ~~88104-TP~~ - PETITION FOR EXPANDED
INTERCONNECTION FOR ALTERNATE ACCESS VENDORS WITHIN LOCAL
EXCHANGE COMPANY CENTRAL OFFICES BY INTERMEDIA
COMMUNICATIONS OF FLORIDA, INC. (PHASE I)

AGENDA: MAY 3, 1994 - REGULAR AGENDA -
ISSUES 1 AND 2 - POST HEARING DECISION - PARTICIPATION IS
LIMITED TO COMMISSIONERS AND STAFF
ISSUE 3 - PROCEDURAL - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP ~~XXXXXXXXXX~~
PHASE I PANEL: CLARK, LAUREDO, JOHNSON

CASE BACKGROUND

Phase I of this Docket went to hearing and a Final Order was issued. Various parties filed petitions for stay, motions for reconsideration, cross motions for reconsideration, motions to strike, and motions for clarification of aspects of the Final Order. GTEFL asked for Oral Argument on its petition for Reconsideration of the constitutional taking issue¹ and on its

¹ It is appropriate for the Commission to resolve a constitutional issue when an affected party asserts that the Commission is applying a statute or rule in such a way that it violates that party's constitutional rights. See Key Haven v. Bd. of Trustees Of the Internal Improvement Trust Fund, 427 So.2d 153, 157-158 (Fla. 1982) Reh'g Denied, March 9, 1983.

DOCUMENT NUMBER-DATE

03736 APR 21 1994

FPSC-RECORDS/REPORTING

DOCKET NO. 921074-TL
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Petition for Stay of mandatory collocation pending the outcome of a federal proceeding addressing the constitutional taking issue. FCTA asked for Oral Argument regarding pricing flexibility.

As part of Phase I, certain companies were ordered to file tariffs to implement expanded interconnection. It was anticipated that these would be reviewed in the normal tariff review process. However, it appears that a decision either to approve or to deny these tariffs might be protested.

In Issues 1 and 2, staff recommends that Oral Argument be denied. Staff will bring a subsequent recommendation to address the remaining Phase I motions.

In Issue 3, staff recommends that the tariffs resulting from Phase I, be considered as part of the Phase II proceeding.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant GTEFL's Request for Oral Argument on its Petition for Reconsideration of the taking issue and on its Petition for Stay?

STAFF RECOMMENDATION: No. The Commission should deny GTEFL's Request for Oral Argument.

STAFF ANALYSIS: On March 25, GTEFL filed a Petition for Reconsideration and Petition for Stay of Order No PSC-94-0285-FOF-TP. At the conclusion of the pleading, GTEFL asks for Oral Argument "if the Commission believes that further discussion of the constitutional question is necessary." Similarly, GTEFL asks for Oral Argument in the event that the Commission "is not prepared to grant the stay without further discussion."

Having reviewed the pleadings and related responsive pleadings, staff recommends that there is adequate argument presented for the Commission to make a well reasoned determination regarding both the Petition for Reconsideration of the taking issue and the Petition for Stay. Thus, staff does not believe that Oral Argument would aid the Commission in reaching its decision and recommends that GTEFL's Request for Oral Argument should be denied.

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Staff notes that the Company's Request for Oral Argument does not conform to the requirements of Rule 25-22.058, Florida Administrative Code, in that it is not a separate document, and does not state with particularity why Oral Argument would aid the Commission in reaching its determination. Thus, staff recommends that, if the Commission wishes to hear Oral Argument on the taking and stay issues, it should deny the Company's Oral Argument Request and, on its own motion, set the matter for Oral Argument.

ISSUE 2: Should the Commission grant FCTA's Request for Oral Argument regarding its Motion for Reconsideration and/or Clarification of Order No. PSC-94-0285-FOF-TP regarding pricing flexibility?

STAFF RECOMMENDATION: No. The Commission should deny FCTA's Request for Oral Argument regarding its Motion for Reconsideration and/or Clarification of Order No. PSC-94-0285-FOF-TP.

STAFF ANALYSIS: On March 25, 1994, FCTA filed a Motion for Reconsideration and/or Clarification of Order No. PSC-94-0285-FOF-TP. In its Motion, FCTA questions Commission approval of pricing flexibility in this Docket² in light of various Florida Statutes. In the alternative, FCTA asks that language in the Order be clarified to indicate that LECs cannot continue to use Contract Service Arrangement (CSA) authority unless they justify, in Phase II of this proceeding, the use of CSAs for private line and special access.

Staff believes that FCTA's pleading, and related responsive pleadings, provide a sufficient basis for the Commission to make a well reasoned decision and that Oral Argument would not aid the Commission in reaching that decision. Therefore, staff recommends that FCTA's Request for Oral Argument should be denied.

² In Phase I, LECs were: granted zone-pricing flexibility on a conceptual basis under the guidelines established by the FCC; required to submit zone density pricing plans; required to file results of efforts to streamline the Contract Service Arrangement process. PSC-94-0285-FOF-TP, at 36.

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ISSUE 3: Should the intrastate expanded interconnection tariffs for private line and special access be reviewed as part of the Phase II hearing in this Docket?

RECOMMENDATION: Yes. The intrastate expanded interconnection tariffs for private line and special access should be reviewed as part of the Phase II hearing in this Docket.

STAFF ANALYSIS: By Order No. PSC-94-0285-FOF-TL, the Commission required the Tier 1 LECs (Southern Bell, Centel, United, and GTEFL) to file intrastate expanded interconnection tariffs for private line and special access within 30 days from the date of the Order. These tariffs were to be reviewed subject to the Commission's normal tariff review process.

Staff believes that these tariffs (T-94-191 Southern Bell, T-94-195 GTEFL, T-94-196 United, and T-94-197 Centel) will be highly controversial and thus, stand a good chance of being protested and set for hearing. Staff recommends that it would be more efficient to address the tariffs in Phase II of this proceeding which is scheduled for hearing on August 22-26, 1994. The Companies have waived the sixty days. The following tentative issue has been added to the Phase II proceeding:

"Should the LEC's proposed intrastate private line and special access expanded interconnection tariffs be approved?"

In the event that the Phase I panel decides against Commission review of the aforementioned tariffs as part of the Phase II proceeding, this issue can be dropped from Phase II.

Therefore, staff recommends that the Commission review the intrastate expanded interconnection tariffs for private line and special access as part of Phase II of the expanded interconnection Docket.

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ISSUE 4: Should this Docket be closed?

RECOMMENDATION: No.

STAFF ANALYSIS: Phase II of this Docket has been set for hearing during August 22-26, 1994 with the special agenda scheduled for November 30, 1994. Therefore, staff does not recommend that this Docket be closed.