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July 15, 1994

IN REPLY REFER TO:
Tallahassee

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

ORIGINAL
FILE COPY

Re: In re: Expanded Interconnection Phase II and
Local Transport Restructure; Docket Nos. 921074-TP,
930955-TL, 940014-TL, 940020-TL and 931196-TL

Dear Ms. Bayo:

Enclosed for filing in the above-styled docket are the original and fifteen (15) copies of United's/Centel's Joint Brief in Support of Petitions for Reconsideration of Order No. PSC-94-0285-FOF-TP.

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

ACK Thank you for your assistance in this matter.

AFA _____

APP _____

CAF _____

CND _____

CTR _____

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Yours truly,


John P. Fons

EAG JPF/csu

LEG Enclosures
Canzano

LIN cc: 4 Parties of Record (w/encl.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Expanded Interconnection) Docket No. 921074-TP,
Phase II and Local Transport) 930955-TL, 940014-TL,
Restructure) 940020-TL, and 931196-TL
_____) Filed: July 15, 1994

UNITED'S/CENTEL'S JOINT BRIEF IN SUPPORT
OF PETITIONS FOR RECONSIDERATION OF
ORDER NO. PSC-94-0285-FOF-TP

United Telephone Company of Florida ("United") and Central Telephone Company of Florida ("Centel"), pursuant to Order No. PSC-94-0832-PCO-TP, issued July 8, 1994, hereby respectfully submit their Joint Brief in Support of the Petitions for Reconsideration of Order No. PSC-94-0285-FOF-TP filed by Southern Bell and GTE Florida with regard to the issue of mandatory physical collocation constituting an unlawful taking of the local exchange companies' (LECs') property.

1. In their prehearing statements and post-hearing statements and briefs, United and Centel characterized mandatory physical collocation as an unlawful taking of the Companies' property. Despite the very persuasive legal arguments advanced by the LECs on the taking issue, the Commission, nonetheless, ordered mandatory physical collocation for intrastate special access and private line services. See Order No. PSC-94-0285-FOF-TP. Subsequent to that order, petitions for reconsideration were filed by Southern Bell and GTE Florida which pointed out the lack of any statutes or case law support for the Commission's contention that mandatory physical collocation does not constitute a taking of the

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LECs' property. While awaiting Commission action on the petitions for reconsideration, the United States Court of Appeals for the District of Columbia Circuit overturned the Federal Communications Commission's ("FCC's") order that similarly required mandatory physical collocation for interstate special access services. The United States Court of Appeals concluded that mandated physical collocation amounts to a taking of the LECs' property and that the FCC is without statutory authority to order such a taking, regardless of the public interest ramifications.¹ See Bell Atlantic Tel. Cos. v. FCC, 1994 W.L. 247134 (D.C. Cir. June 10, 1994). In response to that decision, the FCC, on July 14, 1994, directed the LECs to provide expanded interconnection through virtual collocation. The FCC concluded that virtual collocation produces the same public interest benefits of expanded interconnection as would be produced by physical collocation.²

2. It is not United's/Centel's purpose here to reargue the unlawfulness of this Commission's mandatory physical collocation requirement. It is sufficient to note on this point the following: there clearly is no legal support for the Commission's order; the

¹ The United States Court of Appeals also remanded to the FCC for reexamination and further consideration those portions of its order imposing virtual collocation and the "fresh look" obligations on the LECs. In its July 14, 1994, order, the FCC affirmed its "fresh look" policy.

² The FCC has directed the LECs to file virtual collocation tariffs on September 1, 1994, scheduled to become effective on December 15, 1994. The FCC is also requesting a stay of the issuance of the United States Court of Appeals' mandate until December 15, 1994, with the intention that the LECs' physical collocation tariffs will stay in effect until that date in order to avoid a lapse in the FCC's expanded interconnection requirements.

Bell Atlantic decision that mandatory collocation is a taking has parallel application to this Commission's mandatory physical collocation order; and the FCC, in its July 14, 1994, order, recedes from mandatory physical collocation. Consequently, even putting aside the legality of the taking, there is a very practical reason in these changed circumstances for the Commission to abandon its mandatory physical collocation policy. It would be awkward and grossly inefficient for the Commission to persist in pursuing a collocation policy that most certainly will result in separate and diametrically opposed state and federal collocation requirements. Because the same transmission facility can be used for both intrastate and interstate special access, it would be an engineering and operational nightmare to try to have the same facility interconnected on both a physical and a virtual collocation basis.³ Therefore, this Commission must, from a purely practical standpoint, avoid a jurisdictional conflict.

3. United/Centel agree that physical collocation is perfectly appropriate where space is currently available and will not be needed within a few years. In that event, physical collocation can be offered under contract to those who request it on the same terms and conditions as set forth in United's/Centel's tariffs, except that floor space will be priced at the "market." The "market" price can be that price at which the floor space is put to its highest, best use. If space is not available, or if

³ See Phase I testimony of ICI witness Jonathan E. Canis, Tr. 140-41.

the interconnector is not willing to pay the "market" price for the floor space, then virtual collocation will be provided. This market-based approach should also be equally applicable to the Commission's "checker boarding" requirement.⁴ In the event United/Centel are requested to reserve additional, adjacent space for an interconnector, the interconnector must be willing to pay an up-front fee to reserve the space; the amount of the fee will reflect the impact on United's/Centel's inability to use the space for itself or to lease it to other users at the "market" price.

4. There is little risk that competition will suffer a setback if a particular form of collocation is not mandated, and collocation is, instead, negotiated by the parties. Access competition and, ultimately, local competition are a reality, regardless of the form of collocation. New technology and declining costs assure that competition will occur and that telecommunications consumers in all markets - local, vertical and toll services - will benefit. In Phase I of this proceeding, the AAVs have conceded that collocation allows them access to a larger customer base.⁵ Even with the pricing flexibility granted the LECs

⁴ United/Centel view the "checker boarding" requirement to be a serious compounding of the "taking" of their property. Even though prescribed compensation from the interconnector for use of the space does not cure the "taking" created by mandatory physical collocation, the "checker boarding" scheme is a taking without any certainty of compensation. Because the interconnector is never obligated to use the space, which is the trigger-point for compensation, if the interconnector does not ever use the space, then United/Centel will never be compensated.

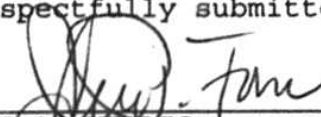
⁵ See Phase I testimony of ICI witness Jonathan E. Canis, Tr. 158; and Phase I testimony of Teleport Communications Group witness Paul Kouroupas, Tr. 251.

in Order No. PSC-94-0285-FOF-TP, there still will be a considerable pricing umbrella so that the AAVs and other new entrants will be lured to compete profitably. Finally, United/Centel recognize that it is in their long-term financial interest to make the terms of interconnection - including collocation - attractive to interconnectors if doing so will generate additional revenues. There is, therefore, considerable incentive for the Commission and the parties to develop procedures which will facilitate negotiated collocation and interconnection in lieu of any mandated collocation.

WHEREFORE, United/Centel urge the Commission to reconsider Order No. PSC-94-0285-FOF-TP, and thereupon forego any form of mandatory physical collocation and, instead, adopt mechanisms and procedures which allow the parties to negotiate the terms of interconnection and collocation, with virtual collocation available in any event. This approach will do nothing to undermine the Commission's ability to require expanded interconnection as part of any overall policy to encourage local competition.

DATED this 15th day of July, 1994.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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