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October 12, 1994

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HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

Re: Docket Nos. 921074-TP, et al.

Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Teleport Communications Group, Inc. in the above-referenced docket are the following documents:

1. Original and fifteen copies of the Posthearing Brief of Teleport Communications Group, Inc.; and
2. A disk in Word Perfect 5.1 containing a copy of the brief entitled "Tele.Post".

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

ACK Thank you for your assistance with this filing.

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Sincerely,

Kenneth A. Hoffman
Kenneth A. Hoffman

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cc: 0 All Parties of Record

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DOCUMENT NUMBER-DATE

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Expanded Interconnection)	Docket No. 921074-TP
Phase II and Local Transport)	Docket No. 930955-TL
Restructure)	Docket No. 940014-TL
)	Docket No. 940020-TL
)	Docket No. 931196-TL
)	Docket No. 940190-TL

Filed: October 12, 1994

POSTHEARING BRIEF
OF TELEPORT COMMUNICATIONS GROUP, INC.

Teleport Communications Group, Inc. ("TCG") hereby submits its Posthearing Brief pursuant to Rule 25-22.056, Florida Administrative Code, and Order No. PSC-94-0076-PCO-TL issued January 21, 1994¹ in this docket. With respect to Issues where no argument is provided, TCG relies on the summary of its position.

Statement of Basic Position

Chapter 364, Florida Statutes, authorizes the Commission to permit alternate access vendors ("AAVs") to provide the local transport portion of switched access services through virtual collocation arrangements under terms and conditions which are technically, operationally and economically comparable to physical collocation.² As demonstrated by the record, expanded interconnection is in the public interest and will bring significant benefits to consumers in Florida by offering consumers operational and strategic security, while the potential revenue

¹94 F.P.S.C. 1:244 at 249 (1994).

²The Commission should also permit the LECs to voluntarily provide physical collocation through negotiations with interconnectors.

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impact on the local exchange companies will be negligible.

ISSUES

ISSUE 1: How is switched access provisioned and priced today?

The Commission approved the following Stipulation (Tr. 12, 17-18):

Switched access service uses a local exchange company's switching facilities to provide a communications pathway between an interexchange company's terminal location and an end user's premises. Switched access is provisioned under a feature group arrangement. There are four feature groups: FGA, FGB, FGC, and FGD. These categories are distinguished by their technical characteristics, e.g. the connection to the central office is line side or trunk side. Rate elements differ by name according to the respective local exchange company. Rate elements typically include local switching, carrier common line, local transport, and carrier access capacity. Rate elements are currently priced under the equal charge rule. This means that each unit is priced the same as the next unit for a given rate element. Rates and charges include recurring, nonrecurring, and usage.

ISSUE 2: How is local transport structured and priced today?

The Commission approved the following Stipulation (Tr. 12, 17-18):

Local transport, as mentioned in Issue 1, is one of the switched access rate elements. Local transport is currently priced on a usage sensitive basis. The rate is applied on a per minute of use basis. Regardless of distance all transport minutes of use are assessed the same rate per minute of use.

ISSUE 3: Under what circumstances should the Commission impose the same or different forms and conditions of expanded interconnection than the F.C.C.?

The Commission should simply order the LECs to use the rates and rate structures they established for their interstate switched tariffs, which in turn were structured on their interstate special access interconnection tariffs and to mirror any changes in those interstate rates.

The rates and rate structure for intrastate switched access

expanded interconnection should mirror the interstate tariffs. The rate elements for switched access interconnection are the same as the rate elements for special access interconnection. They apply equally to interconnection for the provision of interstate or intrastate services. The elements for the collocation space are the cross-connect, floor space, power, cable and conduit, and various non-recurring charges. The elements for the local access service consist of interoffice mileage and a charge for the entrance facility to the interexchange carrier's ("IXC") point of presence ("POP") (Andreassi, Tr. 715).

In order to maximize efficiencies and in recognition of the fact that the same LEC facilities are used for both interstate and intrastate services, the Commission should order the LECs to implement the rates and rate structure found in their interstate switched access expanded interconnection tariffs (Metcalf, Tr. 52; Andreassi, Tr. 715).

ISSUE 4: Is expanded interconnection for switched access in the public interest?

Yes. Expanded interconnection for switched access will bring the benefits of competition to Florida telecommunications users. These benefits include: (1) reduced prices, (2) higher service quality, (3) operational security, (4) strategic security and (5) the construction of local fiber optic infrastructure by TCG and other AAVs without special incentives to AAVs or risk to ratepayers.

In Phase I of this docket, the Commission found that expanded interconnection for special access and private line services is in the public interest. The Commission emphasized that expanding competitive opportunities for special access and private line will bring a number of benefits to end users including:

1. Increase customer choice;
2. Introduction of new services and technologies;
3. Price competition;
4. Diversification and network redundancy;
5. Private investment in the Florida infrastructure;
6. Increased service and quality;
7. Greater responsiveness to end user needs; and
8. Improved efficiency.

Order No. PSC-94-0285-FOF-TP issued March 10, 1994 ("Phase I Final Order"), at 4.³

The record in this proceeding confirms that these benefits will be available to customers in the State of Florida if the Commission implements expanded interconnection for switched access. Mr. Poag testifying on behalf of United/Centel stated that "in the long run, the competitive provisioning of switched access transport service is in the public interest and will provide customers the benefits of product innovation, higher quality service, network diversity, and lower prices" (Tr. 786-787). Intermedia witness Metcalf and TCG witness Andreassi both discussed the operational security that end users will gain from redundant routing which would provide insurance against network failure or disaster (Tr. 54-55, 717). In addition, expanded interconnection for switched access provides strategic security to end users such as information service providers by making available the services of a telecommunications provider (i.e., an AAV) that does not compete with the core business of the end user (Andreassi, Tr. 717).

In the Phase I Final Order, the Commission expressed a concern that expanded interconnection for switched access might have

³See 94 F.P.S.C. 3:399, 402-403 (1994).

significant effects on LEC revenues and place pressure on local rates.⁴ The evidence in Phase II of this proceeding lays such concerns to rest. There is no evidence of record identifying specific impacts on local rates arising out of the implementation of expanded interconnection for switched access. Indeed, GTEFL witness Dr. Beauvais acknowledged that if the Commission adopts the residual interconnection charge ("RIC") for local transport restructure, there will be no revenue loss in the short run (Tr. 284).⁵

If the Commission approves switched access expanded interconnection, the only portion of local transport that would be subject to competition would be the dedicated facility (DS-1 or DS-3) between the LEC end office and the IXC POP. That dedicated facility is the same type of facility used for special access services. The LEC will continue to earn revenues from the carrier common line charge, local switching and the RIC. Using Southern Bell's intrastate switched access elements and prices, the percentage of switched access revenue at risk for Southern Bell in this proceeding is approximately 1.2% for DS-1 facilities and .85% for DS-3 facilities, a total of approximately 2% of Southern Bell's intrastate switched access revenues. (Andreassi, Tr. 713-714,

⁴Phase I Final Order, at 5; 94 F.P.S.C. 3:399, 403 (1994).

⁵Indeed, if competition for the provision of local transport facilities has a downward effect on the IXCs' cost of service and those decreases are flowed through to IXC rates, the LECs may see increased minutes of use and, therefore, revenue increases.

ISSUE 5: Is the offering of dedicated and switched services between non-affiliated entities by non-LECs in the public interest?

Yes. Immediately permitting AAVs to provide dedicated and switched services between non-affiliated entities will greatly enhance the competitive environment in the state and will bring the benefits of operational and strategic security to potential customers in Florida.

The general consensus of the parties to this docket is that the offering of dedicated and switched services between non-affiliated entities by non-LECs is in the public interest. It should be noted, however, that the LECs' support for opening up these services to competitors is conditioned on granting the LECs appropriate pricing flexibility, a condition which was met in the Phase I Order concerning special access expanded interconnection, and which should be met in Phase II consistent with the pricing flexibility for switched access expanded interconnection ordered by the FCC.

Mr. Metcalf testified that large business users who desire to utilize the services of AAVs must place their private line traffic over one circuit provided by the AAV and their switched traffic over another circuit provided by the LEC. This is inefficient, unnecessarily expensive and has caused such users to leave the network entirely and purchase private telecommunications networks. By authorizing expanded interconnection for switched access, large

⁶Mr. Andreassi stated that his calculations assumed that the remaining local transport revenues are recovered through the RIC or tandem switching charge similar to the FCC's local transport restructuring.

business users will be able to choose among competing providers for transport of both private line and switched traffic (Metcalf, Tr. 55-62). Non-LEC competitors are authorized to provide such transport services under Chapter 364, Florida Statutes (see Issue 6) and the competitive provision of such services is clearly in the public interest.

The provision of local transport services by non-LECs will offer operational and strategic security not available to telecommunications users today. Authorizing non-LECs to provide such services also would encourage companies such as TCG to build local fiber optic networks and infrastructure without the need for any special incentives which incumbent LECs may seek and which would transfer risks to LEC ratepayers (Andreassi, Tr. 717).

In sum, the provision of dedicated and switched services between non-affiliated entities by non-LECs is in the public interest. Statutory changes are necessary to permit AAVs to provide the switching and distribution of traffic functions currently reserved to the LECs. TCG supports such statutory changes and encourages the Commission to do the same. In the meantime, TCG encourages the Commission to remove the current restrictions on the resale by the LECs of their private line and special access services in Docket No. 940754-SU. While such action still falls short of full, facilities-based competition and the benefits expected therewith, the removal of such resale restrictions will provide expanded competitive opportunities to AAVs, will maintain LEC revenues for the resale services, and will

benefit Florida's ratepayers.

ISSUE 6: Does Chapter 364, Florida Statutes, allow the Commission to require expanded interconnection for switched access?

Yes. Chapter 364 allows the Commission to require expanded interconnection for switched access for the same reasons it allowed the Commission to order special access interconnection. The dedicated transport service provided by AAVs is the same in both instances.

Chapter 364, Florida Statutes, authorizes the Commission to require expanded interconnection for switched access. One of the primary thrusts of Chapter 364 is the promotion and encouragement of competition in the telecommunications industry. This mandate is found in Section 364.01(3)(c), Florida Statutes, which provides:

(3) The Commission shall 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 telecommunications services available at reasonable prices. (Emphasis added.)

The Commission exercised its authority to promote competition by approving expanded interconnection for special access/private line services in the Phase I Final Order. In the case of expanded interconnection for switched access, the dedicated local transport which would be provided by a non-LEC, including an AAV, is functionally equivalent to the dedicated transport service previously approved in Phase I (Andreassi, Tr. 720; Lee, Tr. 300-301).

Section 364.335(3), Florida Statutes, defines a "private line service" as:

[A]ny point-to-point or point-to-multipoint service dedicated to the exclusive use of an end-user for the transmission of any public telecommunications service.

The testimony of Messrs. Guedel, Rock and Andreassi established that local transport service involves a dedicated, point-to-point facility between the LEC central office (or the collocation point with expanded interconnection) and the IXC POP which is dedicated to the exclusive use of the end user, in this case, the IXC (Tr. 180-181, 702-703, 767-768).

GTEFL's witness, Dr. Beauvais, who did not claim any legal expertise, alleged that expanded interconnection for switched access is not authorized under Chapter 364 on the ground that local transport is a switched access service (Tr. 285). The record clearly establishes that local transport is a dedicated, point-to-point service which is technically and economically equivalent to a private line service and which does not entail switching and distribution of calls (Tr. 283, 743).⁷ The switching function is performed by the LEC upon completion of the transport of the call from the IXC's POP. Dr. Beauvais' opinion on this issue should be rejected.

Dr. Beauvais also indicated that even if the Commission were to reject his position that local transport is a switched service, Chapter 364 still prohibits AAVs, although not necessarily other non-LEC providers, from providing the local transport piece of

⁷Similarly, the provision of customer premises equipment used to originate long distance calls switched through a LEC central office does not involve the provision of a switched access service.

switched access. (Tr. 285; see also, Southern Bell witness Denton, Tr. 389). While failing to cite any authority for this statement, TCG presumes Dr. Beauvais refers to Section 364.337(3)(a), Florida Statutes, which authorizes AAVs to provide "private line service between an entity and its facilities at another location" Dr. Beauvais' opinion is contrary to the intent of Chapter 364 and the precedent of the Phase I Final Order.

In the Phase I Final Order, the Commission approved interconnection and collocation of special access and private line facilities. Strictly speaking, this would require an AAV to run a line between an end user (customer) and the LEC central office -- two non-affiliated entities. Although this issue is not specifically addressed in the Phase I Order, the apparent justification for approving such interconnections for AAVs is that the LEC is viewed as a transparent entity (i.e., not affiliated and not unaffiliated) in relationship to the AAV's customer. With local transport, the very same function, facility and entities are involved. The IXC customer purchases a dedicated facility from the AAV. The AAV carries the traffic on the dedicated facility to the LEC and hands the traffic off to the LEC for switching and distribution. There is simply no difference between the facilities and services provided by an AAV under expanded interconnection for special access/private line and switched access services when viewed within the context of Section 364.337(3)(a), Florida Statutes.

Secondly, the approval of expanded interconnection for switched access service, like the approval of interconnection and collocation for special access/private line services in Phase I, is entirely consistent with the Commission's statutory mandate to encourage competition in the telecommunications industry and will bring the benefits of competition to end users (Andreassi, Tr. 720). To the extent the provisions in Chapter 364 governing private line services provided by AAVs are susceptible to differing interpretations, fundamental principles of statutory construction dictate that the legislature's intent to encourage competition be given effect. See, e.g., Smith v. City of St. Petersburg, 302 So.2d 756, 757 (Fla. 1974); Deltona Corporation v. Florida Public Service Commission, 220 So.2d 905, 907 (Fla. 1969). Moreover, since the record clearly shows that expanded interconnection for switched access will benefit the public, the statutory provisions at issue are to be given a liberal construction in favor of the public. See Department of Environmental Regulation v. Goldring, 477 So. 2d. 532, 534 (Fla. 1985).

Third, a determination by the Commission that AAVs are not authorized to provide local transport for switched access services will leave the AAVs with the authority to provide interstate but not intrastate local transport. Such a result would severely handicap the ability of AAVs to compete in the local transport market to the detriment of end users.

Fourth, a retreat by the Commission from the policy established in Phase I will not only impede the growth of

competition and benefits brought to end users by competitive providers but may also add unnecessary expense and confusion to the telecommunications industry. For example, if the Commission were to decide that only AAVs are prohibited from interconnecting with the LECs to provide local transport, will that mean that any AAV that wishes to do so must now bear the expense of obtaining a certificate as an IXC? Or, will AAVs now have to convince an IXC to collocate its own facilities at a LEC end office so that the AAV's facility could run from the IXC POP to the IXC's collocation point and then into the LEC switch in order to satisfy the "affiliated entities" provision? Such questions, areas of confusion and unnecessary expense will be avoided by finding that expanded interconnection for switched access is authorized for all non-LECs under Chapter 364, Florida Statutes.

ISSUE 7: Does a physical collocation mandate raise federal or state constitutional questions about the taking or confiscation of LEC property?

The D.C. Circuit Court of Appeals' decision addressed the federal constitutional issues regarding physical collocation. A virtual collocation mandate does not raise federal or state constitutional questions concerning the taking or confiscation of LEC property.

In Bell Atlantic Telephone Companies v. Federal Communications Commission, 24 F.3d 1441 (D.C. Cir. 1994), the Court considered the FCC's decision to, inter alia, impose a mandatory physical collocation requirement on the LECs unless: (1) the LEC demonstrated that a particular central office lacked physical space to accommodate collocation, or (2) a state legislature or public utility commission issued a final decision before February 19, 1993

to allow virtual collocation for intrastate interconnection. See Expanded Interconnection with Local Telephone Company Facilities (FCC Docket No. 91-141), Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369, 7389-7394; Memorandum Opinion and Order, 8 FCC Rcd. 127 (1993). The Court acknowledged that it had no power to determine if the physical collocation requirement constituted an unconstitutional taking of private property without just compensation because jurisdiction for such questions involving a claim exceeding \$10,000 lies in the United States Claims Court.⁸ Nonetheless, the Court was sufficiently concerned that the requirement did implicate a taking and applied a strict test of statutory interpretation in holding that the physical collocation mandate was not authorized under the Communications Act of 1934, 47 U.S.C. §201, et. seq. (1988). The Court, therefore, vacated the FCC's orders insofar as they required physical collocation and remanded the orders to the FCC for further consideration of the application of a virtual collocation requirement. In response to the Court's remand, the FCC issued a Memorandum Opinion and Order on July 25, 1994 ("1994 Memorandum Opinion and Order") imposing a virtual collocation mandate and leaving the LECs the option of voluntarily providing physical collocation.

TCG concurs with the Commission's determination in Phase I that the most workable, cost effective arrangements for collocation come from similar requirements being imposed at the federal and

⁸Bell Atlantic, 24 F.3d 1441 at 1444, fn. 2.

state levels.' Therefore, with the federal appeals court's rejection of the physical collocation mandate, TCG chooses not to address the issue of whether a physical collocation mandate violates the Florida Constitution, and urges the Commission to require the LECs to provide virtual collocation (with physical collocation provided on a voluntary basis) under terms and conditions that are technically, operationally and economically comparable to physical collocation (Andreassi, Tr. 727).

ISSUE 8: Should the Commission require physical and/or virtual collocation for switched access expanded interconnection?

The Commission should allow LECs to negotiate with interconnectors to establish physical collocation arrangements. In the absence of such negotiations, the Commission should mandate that the LECs provide virtual collocation which is technically, operationally and economically comparable to physical collocation.

The record in this proceeding indicates that the only true point of contention on this issue is whether a virtual collocation mandate should be implemented under arrangements which are technically, operationally and economically comparable to physical collocation. This "physical collocation standard" for virtual collocation has been adopted by the New York Public Service Commission and has served to ensure that the critical competitive technical, operational and financial characteristics of the interconnector's services are not affected by the form of collocation (Andreassi, Tr. 727-728).

'Phase I Final Order, at 12; 94 F.P.S.C. 3:399, 408 (1994).

As Florida Cable Television Association witness Davis explained, a physical collocation standard for virtual collocation will permit competitors to implement their own high quality service standards as opposed to forcing competitors to provide services which resemble the service standards of the LECs (Tr. 568). Mr. Andreassi mirrored Mr. Davis' remarks on this issue and noted that TCG would be willing to pay cost-based rates for higher service standards (Tr. 738). Messrs. Andreassi and Davis also testified that the physical collocation standard for virtual collocation will provide interconnectors with effective negotiating leverage to pursue reasonable physical collocation arrangements, an issue considered by the Commission in Phase I, albeit in a different context, when the Commission mandated physical collocation as a "check" on the adequacy of expanded interconnection offered through virtual collocation (Tr. 569-570, 728-729).¹⁰

This standard helps expedite collocation arrangements and the resulting competitive choices for end users, both of which are in the public interest. For example, Mr. Andreassi referred to a prior TCG experience with NYNEX in New York where the lack of virtual collocation standards caused ongoing disputes between TCG and NYNEX concerning installation and repair issues. The waste of the parties' time and resources finally led to NYNEX tariffing physical collocation. (Andreassi, Tr. 775-776). TCG hopes that the LECs in Florida will benefit from the NYNEX experience and voluntarily offer physical collocation.

¹⁰Phase I Final Order, at 14; 94 F.P.S.C. 3:399, 408 (1994).

TCG recognizes that the FCC refused to implement a "physical collocation standard" for virtual collocation, in part, on the belief that such a standard could be construed to be equivalent to mandatory physical collocation. 1994 Memorandum Opinion and Order, at paragraph 43. TCG disagrees with the FCC. The Bell Atlantic decision was premised on and emphasized the critical differences between physical and virtual collocation:

The difference between the two schemes is a difference in ownership and right of occupancy; under virtual co-location the LEC owns and operates the circuit terminating equipment, whereas under physical co-location the CAP owns the equipment and enjoys a right to occupy a portion of the LEC office in order to maintain the equipment. (Emphasis supplied.)

Bell Atlantic, 24 F.3d 1441 at 1446.

Under a physical collocation standard for virtual collocation, the characteristics of the virtual collocation would not change. The collocator would not own the equipment nor would it occupy a portion of the LEC office. However, the collocator would be able to receive installation, maintenance and repair services consistent with the standards used to provide services to its non-collocated customers. Simply put, the ability to purchase a higher level of service from the LEC does not amount to ownership of the LEC's property nor occupation of the LEC's premises.

Accordingly, for the reasons set forth above, TCG requests the Commission to require the LECs to provide virtual collocation which is technically, operationally and economically comparable to physical collocation while permitting the LECs the option of

negotiating physical collocation arrangements.

ISSUE 9: Which LECs should provide switched access expanded interconnection?

18) : The Commission approved the following Stipulation (Tr. 12, 17-18) :

Only Tier 1 Lecs (Southern Bell, GTEFL, United, and Centel) shall be required to offer switched access expanded interconnection.

If a non-Tier 1 LEC receives a bona fide request for expanded interconnection but the terms and conditions cannot be negotiated by the parties, the Commission shall review such a request on a case-by-case basis. If the parties agree on expanded interconnection, the terms and conditions shall be set by individual negotiation.

ISSUE 10: From what LEC facilities should expanded interconnection for switched access be offered? Should expanded interconnection for switched access be required from all such facilities?

18) : The Commission approved the following Stipulation (Tr. 12, 17-18) :

Expanded interconnection shall be offered out of all LEC offices, which include central offices, end offices, tandems, and remotes, that are used as rating points for switched access services and have the necessary space and technical capabilities. Initially, expanded interconnection shall be offered out of those central offices that are identified in the proposed tariffs in the interstate jurisdiction. Additional offices shall be added within 90 days of a written request to the LEC by an interconnector.*

ISSUE 11: Which entities should be allowed expanded interconnection for switched access?

18) : The Commission approved the following Stipulation (Tr. 12, 17-18) :

Any entity shall 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, orders and statutes.

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

*No. As monopoly providers of essential bottleneck

facilities, LECs need to be required to provide expanded collocation to interconnectors. However, non-dominant, competitive carriers need no such requirement. As competition for switched services develops, a competitor would be foolish to reject a collocation request and the associated revenues.*

The Commission considered this very same issue in Phase I and found:

Upon review, it appears that symmetrical treatment might be appropriate in a more mature environment. However, at this juncture, we find mandated symmetrical treatment to be inappropriate in an asymmetrical market where the LECs are the dominant provider of local access services and the owner of the bottleneck facilities. Therefore, we shall not mandate that collocators permit LECs and other parties to interconnect with their networks. Instead, we simply encourage collocators to allow LECs and other parties to interconnect with their networks.¹¹

There was no new evidence introduced by the LECs in Phase II of this proceeding which would support a contrary result for expanded interconnection for switched access. Mr. Andreassi's testimony, on the other hand, was consistent with the rationale articulated by the Commission for rejecting a reciprocal collocation requirement in Phase I (Tr. 721). Specifically, the LECs own the bottleneck facilities and a reciprocal collocation mandate is unnecessary since a competitor would be foolish to reject the revenue opportunity (Tr. 721, 1013-1014). Because AAVs are not statutorily authorized to provide switched telecommunications services, a reciprocal collocation mandate remains irrelevant

¹¹ Phase I Final Order, at 17-18; 94 F.P.S.C. 3:399, 412-413 (1994).

unless and until such authorization is granted by the Legislature. If such authorization is granted by the Legislature, it may then provide a meaningful option to a LEC who may choose to collocate with an AAV to route calls which require switching and distribution through the ubiquitous network (Tr. 745-748).

ISSUE 13: Should the Commission allow switched access expanded interconnection for non-fiber optic technology?

The Commission approved the following Stipulation (Tr. 12, 17-18):

Yes. The Commission shall allow expanded interconnection of non-fiber optic technology on a central office basis where facilities permit. The actual location of microwave technology shall be negotiated between the LEC and the interconnector.

ISSUE 14: Should all switched access transport providers be required to file tariffs?

No. Only LEC providers which have control over bottleneck facilities should be required to file tariffs.

Again, the Phase I Order should control the Commission's determination in Phase II of this proceeding. In Phase I, the Commission concluded that it is not necessary to require "AAVs and AAV-like interconnector entities to file tariffs."¹² The record in Phase II provides no basis for reaching a contrary result. It should be noted that Mr. Gillan, on behalf of the Interexchange Access Coalition, advocated the imposition of mandatory tariff filing requirements on AAVs (Tr. 966). Mr. Gillan did not attempt

¹²Phase I Final Order, at 30; 94 F.P.S.C. 3:399, 422 (1994). The Commission cautioned, however, that tariff filing requirements for AAVs and AAV-like interconnector entities remain a possibility should experience show that such interconnectors are engaging in discriminatory practices among customers. *Id.*

to support his position on grounds that AAVs had engaged in discriminatory pricing practices among customers. Instead, he acknowledged that his true motive in endorsing such a requirement is that it will lend support to his primary concern -- LEC pricing discrimination through contract service arrangements ("CSAs") (Tr. 966). The Commission may or may not wish to follow up on the concerns it expressed with CSAs in the Phase I Final Order.¹³ However, concerns with CSAs and LEC pricing discrimination are not and should not be intertwined with the question of whether AAVs should be required to file tariffs. The Commission should reject Mr. Gillan's position and mirror its decision in Phase I on this issue.

ISSUE 15: Should the proposed LEC flexible pricing plans for private line and special access services be approved?

No. LECs should not be permitted additional pricing flexibility because the impact of intrastate Local Transport Restructuring will be minimal, affecting only the local transport portion of the switched access market which encompasses approximately 2.0% of the switched access revenues.

The zone pricing flexibility granted to the LECs by the FCC for interstate services and approved in concept by the Commission in Phase I of this proceeding is adequate.¹⁴ No additional pricing flexibility is necessary.

¹³Phase I Final Order, at 23; 94 F.P.S.C. 3:399, 416, 426 (1994).

¹⁴Phase I Final Order, at 23; 94 F.P.S.C. 3:399, 416, 426 (1994).

ISSUE 16: Should the LECs' proposed intrastate private line and special access expanded interconnection tariffs be approved?

To the extent that these tariffs mirror the LECs' interstate tariffs, they should be approved. The Commission must also ensure that the LECs' tariffs do not contain unreasonable warehousing provisions and comply with the Phase I Final Order.

TCG believes that these tariffs should be approved to the extent they mirror the LECs' interstate tariffs which are subject to future modification as the FCC completes its investigation and analysis of the tariffs. TCG emphasizes, however, that approval should not be granted unless the tariffs are modified to comply with the Phase I Final Order. TCG's concerns with specific LEC tariffs follow:

1) Southern Bell's tariff fails to include rates, terms and conditions for a DS0 interconnection service as required by the Phase I Final Order, at 26-27.¹⁵

2) The warehousing provisions of the Phase I Final Order require the LEC to give the interconnector at least 60 days before the interconnector must forfeit the space.¹⁶ Southern Bell's

¹⁵See 94 F.P.S.C. 3:399, 419, 427 (1994).

¹⁶Phase I Final Order, at 19; 94 F.P.S.C. 3:399, 426 (1994). TCG has requested reconsideration of this issue in Phase I on the grounds that 60 days is not a reasonable period of time and will force interconnectors to order interconnections thereby triggering pricing flexibility (Andreassi, Tr. 722). TCG has asked the Commission to enter an order on reconsideration which removes any time deadline for forfeiture of space in the warehousing provisions of the LEC tariffs.

tariff calls for a 30 day notice requirement¹⁷ and should be modified to 60 days pending disposition of TCG's motion for reconsideration on this issue. GTEFL's tariff requires collocators to relinquish space within a reasonable time.¹⁸ Again, subject to TCG's pending motion for reconsideration, GTEFL's tariff language should be revised to permit interconnectors at least 60 days from the date of notification to relinquish space (Andreassi, Tr. 722).

ISSUE 17: Should the LECs proposed intrastate switched access interconnection tariffs be approved?

To the extent that the LECs tariffs offering switched access interconnection, including tandem facilities, mirror their intrastate special access interconnection tariffs, they should be approved.

ISSUE 18: Should the LECs be granted additional pricing flexibility? If so, what should it be?

The LECs should be granted additional pricing flexibility only to the extent that pricing flexibility mirrors FCC pricing flexibility for switched access expanded interconnection.

The Commission should maintain consistency on this issue in Phase II of this proceeding by approving the zone pricing concept for switched access expanded interconnection consistent with that ordered by the FCC. In addition, TCG believes the Commission should also follow the FCC's approval of the volume and term discounts established by the FCC in its Expanded Interconnection Order (FCC 94-190, released July 15, 1994) (Andreassi, Tr. 723,

¹⁷See Section E & B 20.1.5(c)(3)(g) of Southern Bell's intrastate private line and special access expanded interconnection tariff.

¹⁸See Section 17.7.2(E) of GTEFL's intrastate private line and special access expanded interconnection tariff.

ISSUE 19: Should the Commission modify its pricing and rate structure regarding switched transport service?

- a) With the implementation of switched expanded interconnection.
- b) Without the implementation of switched expanded interconnection.

The Commission should mirror the FCC's rules.

ISSUE 20: If the Commission changes its policy on the pricing and rate structure of switched transport service, which of the following should the new policy be based on:

- a) The intrastate pricing and rate structure of local transport should mirror each LEC's interstate filing, respectively.
- b) The intrastate pricing and rate structure of local transport should be determined by competitive conditions in the transport market.
- c) The intrastate pricing and rate structure of local transport should reflect the underlying cost based structure.
- d) The intrastate pricing and rate structure of local transport should reflect other methods.

The Commission should mirror each LEC's interstate filing, respectively.

ISSUE 21: Should the LECs proposed local transport restructure tariffs be approved? If not, what changes should be made to the tariffs?

The Commission should mirror the FCC's rules.

ISSUE 22: Should the Modified Access Based Compensation (MABC) agreement be modified to incorporate a revised transport structure (if local transport restructure is adopted) for intraLATA toll traffic between LECs?

TCG takes no position at this time concerning whether the MABC agreement should be modified. The Commission should mirror the FCC's rules in revising transport structure for intraLATA toll traffic between LECs.

ISSUE 23: How should the Commission's imputation guidelines be modified to reflect a revised transport structure (if local transport restructure is adopted)?

The Commission should adopt an effective imputation policy which would require LECs to impute to their end-to-end service the costs they impose on interconnectors to collocate in their bottleneck facilities.

Staff's position on this issue as reflected in the Prehearing Order¹⁹ states, in pertinent part, as follows:

If Local Transport rates are reduced and/or restructured then imputation calculations for MTS rates should be modified accordingly. Imputation guidelines should continue to require that switched access charges, not actual costs, be recovered by LEC toll rates.

TCG agrees with Staff's position and believes that Staff's position is consistent with the Commission Order establishing imputation guidelines for local exchange company toll pricing.²⁰ However, Staff's position does not address the impact of imputation on expanded interconnection.

Southern Bell witness Hendrix confirmed on cross-examination that in order to receive collocation, an interconnector will have to purchase monopoly inputs or services from the LEC such as the collocation space, the cross-connection and multiplexing service (Hendrix, Tr. 955). Based on Mr. Hendrix's testimony, the Commission should supplement its existing imputation guidelines by requiring the LECs to impute the monopoly costs of interconnection to the dedicated transport service provided by the LECs (Andreassi,

¹⁹Order No. PSC-94-1004-PHO-TP issued August 18, 1994, at 59.

²⁰Order No. 24859, 91 F.P.S.C. 7:477 (1991).

Tr. 725).

ISSUE 23(a): Should the Commission modify the Phase I order in light of the decision by the United States Court of Appeals for the District of Columbia Circuit?


The Commission should modify the Phase I Final Order by eliminating the physical collocation mandate and requiring virtual collocation that is technically, operationally and economically equivalent to physical collocation.

The only modifications to the Phase I Final Order necessitated by the United States Court of Appeals decision in Bell Atlantic and the FCC's 1994 Memorandum and Order are the elimination of the physical collocation mandate and the requirement that all LECs provide and tariff virtual collocation. As previously discussed, TCG urges the Commission to require that virtual collocation be provided under terms and conditions that are technically, operationally and economically equivalent to physical collocation. In addition, the modifications to the Phase I Final Order also should reflect modified tariff filing requirements flowing from and consistent with the above-described modifications.

ISSUE 24: Should these dockets be closed?

Once expanded interconnection for special and switched access services is fully implemented through reasonable, economically viable tariffs, the Commission can permit these dockets to become inactive. It should not close them, however, but leave them open for parties to raise interconnection problems.

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