

**ORIGINAL
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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
<hr/>		DOCKET NO. 940020-TL
		DOCKET NO. 931196-TL
		DOCKET NO. 940190-TL

FILED: 10/12/94

**INTERMEDIA COMMUNICATIONS OF FLORIDA, INC.'S
POST HEARING BRIEF**

Intermedia Communications of Florida, Inc. ("Intermedia"), hereby files this its Post Hearing Brief in the above-docketed matter.

INTRODUCTION

Expanded interconnection for switched access allows transport to be unbundled from switching. Services previously bundled together as products provided exclusively by the LEC can now be split so that customers can one day choose between the vendor of

ACK ✓ the switching and the vendor of the transport. In this phase,
 AFA _____ however, the vendor of the switching will remain the LEC, while the
 APP _____
 CTF _____ vendor of the transport can be any qualifying interconnector, such
 CTR Reith as an IXC or AAV. Expanded interconnection for intrastate switched
 EAG _____ access is therefore in the public interest. Consistent with
 LEG Can expanded interconnection for special access and private line
 LIT H service previously approved by this Commission in Phase I of this
 OFD _____
 ROH _____ docket, approval of expanded interconnection for switched access
 SFC 1 represents the next logical step in the effort to create the
 W/S _____ benefits that competition offers: more rapid deployment of new
 QTR _____ technology, system redundancy and increased protection against

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service outages, increased service innovation and greater customer choice, and price competition that will reduce the cost of telecommunications services to all customers.

With respect to the pricing and rate structure of local transport services, Intermedia has only two basic points. First, dedicated transport of intrastate traffic from the point of interconnection with the central office to the IXC's point-of-presence (POP) meets the statutory definition of private line and is allowable without further action of the Commission. Second, this local transport (which is now provided exclusively by the LEC), constitutes only a small part of the LEC's claimed monopoly. Thus, provision of local transport by competitors such as Intermedia will have no significant effect on the revenues of the LEC.

DISCUSSION

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

Approved Stipulation:

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?

Approved Stipulation:

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 FCC?

Position: For efficiency, the Commission should not establish conditions that differ greatly from those imposed by the FCC on most aspects of collocation. Therefore, with the exception of pricing flexibility, Intermedia recommends that the Commission adopt the same forms and conditions as those dictated by the FCC.

In Order No. PSC-94-0285-FOF-TP ("Phase I Order"), this Commission ruled that generally the terms and conditions for intrastate expanded interconnection should mirror those for interstate purposes. This approach flows from the obvious observation that ". . . the same equipment will carry both intrastate and interstate traffic" *Id.* at 23. The same rationale applies to maintaining consistency in the terms and conditions of interconnection for both special access and "switched access" purposes, and is well supported in the record. [See, for example, Andreassi, Tr. at 723; Rock, Tr. at 652; Denton, Tr. at 360; Beauvais, Tr. at 225.]

The wisdom of employing the same structure for both interstate and intrastate interconnection does not apply to the specific rate levels for these elements, nor to the method for

determining these levels. As noted in its discussion under Issue 15 and Issue 18, the Commission should not mirror the FCC's approach with respect to pricing flexibility.

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

Position: Yes. Benefits from expanded interconnection will include more rapid deployment of new technology, system redundancy and increased protection from disastrous service outages, increased service innovation and greater customer choice, as well as price competition which will reduce the cost of telecommunications services to all customers. These benefits are critical to communications dependent businesses, and will promote the general public interest.

A. Introduction

In the context of this proceeding, "expanded interconnection for switched access" means "expanded interconnection for the dedicated transport of switched long distance traffic from the LEC's end-office to the long distance company's point-of-presence." This dedicated transport is functionally and economically no different than the kind of dedicated transport (i.e., private line and special access) approved by this Commission in the Phase I Order. Moreover, this proposed use of expanded interconnection is narrow and poses no financial threat to the LECs. Nevertheless, competitive provision of dedicated transport of switched traffic is an important next step in the development of competition in the local arena. [Tr. at 129.]

Intermedia begins with this clarification because in order to address the public interest question, the Commission must specifically define the contemplated use of expanded

interconnection. For example, as framed, Issue 4 conjures up images of full competition in switching, where substantial revenue support for local service is at stake. Because of this expansive framing of Issue 4, the LECs have skipped lightly over the appropriateness of competition in transport to declare doom on the horizon from competition in switching. [See, for example, Beauvais, GTEFL, Tr. at 218-20.]

The LECs' concerns about competition in switching are premature. The LECs correctly recognize that allowing competition in dedicated transport of switched traffic unbundles transport from switching for the first time. No longer will customers be denied the benefit of competitive choice for any particular transport service simply because the LEC has chosen to bundle that service with switching as part of a telecommunication product. Of course, once transport of traffic before and after switching becomes competitive, the switching itself might then be provided competitively. That predicted transformation, however, is some time off and definitely not part of this docket.

Notwithstanding the concerns of LECs about switching, all parties in this docket appear to agree that expanded interconnection for dedicated transport of traffic switched by Tier I LECs is or at least can be in the public interest. To be sure, the LECs argue that they should have increased regulatory flexibility and that the form and terms of expanded interconnection should not be mandated if the LECs are not to be disadvantaged. However, the record does not support the proposition that the

public interest benefits from expanded interconnection are contingent upon satisfaction of the LECs' demands. Rather, the public benefits from expanded interconnection will be generated by competition in the dedicated transport of switched traffic. No one has suggested that the LECs are not formidable competitors on their own turf, with or without increased LEC flexibility in pricing.

The public interest analysis in this phase is, as in the last, essentially a balancing test: will the good to be gained (or the harm to be avoided) outweigh the harm caused (or the good lost) through this course of action? Applying the balancing test in light of current Chapter 364 of the Florida Statutes, the FCC's decisions regarding interconnection, and the record of this case, it is clear that expanded interconnection is in the public interest.

B. Competition Benefits the Public Generally.

The benefits of competition as a process are well known and embraced by this Commission. These benefits include the following:

- (a) competitive markets are better than non-competitive markets at producing the types of goods and services that are most in demand by consumers;
- (b) competition offers the greatest opportunity for the introduction of new technology and new services;
- (c) competitive production of goods and services results in the most efficient use of inputs, so that society gets the most for its money;
- (d) competition offers users the ability to diversify the risks of outages; and
- (e) competition allows society to spend less on regulatory processes and procedures.

Chapter 364 also endorses the competitive provision of telecommunications services where practical. For example, in Section 364.01(3)(c), Florida Statutes, the Commission is directed to exercise its exclusive jurisdiction to:

Encourage cost-effective technological innovation and competition in the telecommunications industry if doing so will benefit the public by making modern and adequate services available at reasonable prices.

Similarly, Section 364.01(3)(e), Florida Statutes, directs the Commission to:

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.

C. Benefits of Expanded Interconnection

Granting AAVs expanded interconnection will fulfill the charge of these two provisions perfectly, and deliver the benefits contemplated under the statute. As recognized in the Phase I Order, expanded interconnection in general is in the public interest because it will accelerate the deployment of technology and applications while satisfying current and future demands of customers, all without limiting the LECs' ability to compete. Moreover, many of the applications demanded by these customers will be commercially risky. AAVs will put their money at risk in betting on these markets, and the competition among these vendors will serve as a proving ground for new applications. The LECs will

learn from the experiences of the interconnectors, and the general body of ratepayers will benefit.

The specific benefits of competition in these markets were confirmed by Intermedia's witness, Mr. Doug Metcalf:

Such competition would encourage users to take advantage of new, upgradeable technology and to purchase facilities for their efficiency and cost, not because there is only one supplier.

Further, expanded competition will discourage large users from purchasing private networks and facilities such as VSAT and microwave which have several detrimental longer term consequences for business users, the other remaining network users, the Commission and ultimately the LECs and IXC's.

[Tr. at 51.]

Mr. Metcalf particularly stressed the importance of expanded competition in retaining large users on the network. In responding to the cross-examination of GTEFL's counsel, Mr. Metcalf explained as follows:

Right now when a large user leaves the network and goes to VSAT . . . and uses that to beam up and come down in their own locations with their own towers and their own dishes, you . . . lose the revenue . . . We've now purchased capital equipment, we put it totally on a private network and it's gone, and it doesn't come back.

[I]f the price is better and the efficiency is better and the technology is better, our clients ought to be able to leave and go to the AAVs, use them to get to the IXC's and keep the revenue on somebody's network. Then in a year or two when you get your act together or get more flexibility or come up with the same technology or even better technology, you have the opportunity to come to the large users and say, "Come on back. We've got a better deal." And with nothing more than a few cross-connects, that can occur. The revenue didn't leave somebody's network. But when the revenue leaves to a private network it does not come back. It didn't come back with Barnett, it didn't come back with First Union, and it almost didn't come

back with Publix Publix was three weeks from making its decision until this case started, and then all of a sudden they said, "Well, maybe things will change," so they put the business decision to leave the network . . . on hold pending the results of competition and this docket. And they'd like to see themselves be able to talk to an alternative carrier and stay on somebody's network. It's the only way that you retain some portion of the revenue and that the business users can meet their technology needs.

[Tr. at 80-81.]

Mr. Mike Guedel, witness for AT&T, also embraced expanded interconnection as being in the public interest and offered the classic justification for this position:

The adoption of expanded interconnection would facilitate the beginning of competition within the local exchange and would benefit customers in much the same way as competition in other aspects of the telecommunications industry (i.e., interexchange services or telephone sets) has benefited customers over the years. Competition facilitates customer choice and the development and production of new and innovative services designed or tailored to meet particular customer needs. Competition fosters better price performances as competing vendors vie for customers in the open market place. Competition will also assist the regulators in regulating the local exchange companies encouraging these companies to become more efficient and more responsive to customer needs.

[Tr. at 126.]

As noted above, even the LECs appear to embrace the position that expanded interconnection is in the public interest. Of course, in acknowledging the public interest benefits of competition in the local markets, each Tier 1 LEC witness was also sure to emphasize the LECs' long-term needs for regulatory flexibility. [See, e.g., Beauvais, Tr. at 238-39; Denton, Tr. at 361; Poag, Tr. at 784-86.]

D. Effect of Expanded Interconnection for Dedicated Transport of Switched Traffic on Specific End-users and Ratepayers Generally

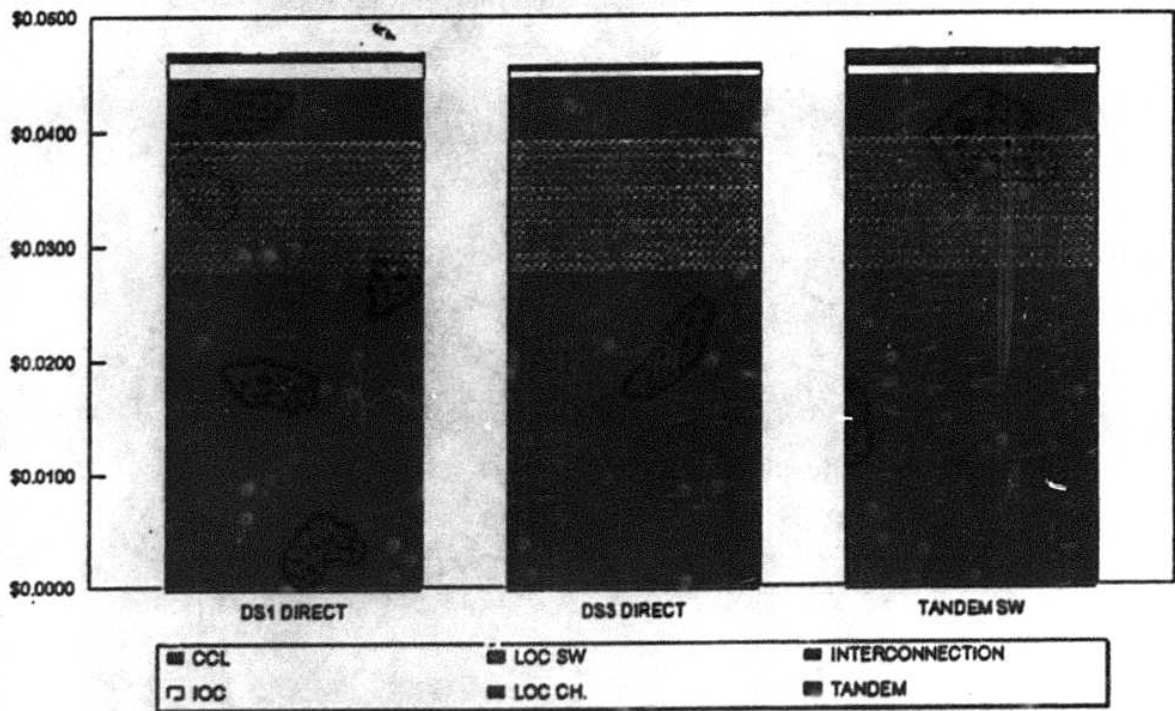
The purpose of expanded interconnection is to expand the availability of competitive dedicated transport of switched traffic. Thus, IXC's who receive the benefit of this competition will enjoy improved services at reduced prices. This financial benefit will promote the general public interest by lowering IXC input costs in their delivery of long distance service to end-users, who in turn will receive better and cheaper service. Realistically, however, price reduction in long distance service should not be significant because the IXC's' intrastate transport element is such a small portion of their access costs.

That the intrastate transport element is a small portion of an IXC's access costs is clearly established in the record. For example, Composite Illustration 1 (Hendrix Exhibit 3, page 2 of 2 from Exhibit 26) reflects through bar graphs the relative portions of intrastate average switched access rates. Of the various elements, (i.e., carrier common line, local switching, BHMOC, local channel, and underoffice channel) the interoffice channel -- or transport, as referred to in this brief -- produces the least revenue irrespective of whether transport is DS1 direct, DS3 direct or tandem switched. This graph is supported by the testimony of Mr. Hendrix [Tr. at 416] and is consistent with the testimony of Mr. Andreassi for TCG, stating that ". . . the dedicated trunk portion of the interstate switched access accounts . . ." is approximately 3.8%, and the intrastate equivalent might not be that much [Tr. at 713].

COMPOSITE ILLUSTRATION 1

Hendrix Exhibit 3
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FLORIDA SWITCHED ACCESS
LTR RATE PER MINUTE COMPARISON



Per Minute	Tandem Sw.	DS1 Direct	DSS Direct
1. Average CCL	\$0.02775	\$0.02775	\$0.02775
2. Local Switching	\$0.01160	\$0.01160	\$0.01160
3. Interconnection (IC)	\$0.00518	\$0.00518	\$0.00518
Sub Total (1+2+3)	\$0.04453	\$0.04453	\$0.04453
Sub Total as % of Total	95.0%	95.3%	97.4%
4. Local Channel	\$0.00062	\$0.00062	\$0.00053
5. Access Tandem	\$0.00078	\$0.00000	\$0.00000
6. Interoffice	\$0.00093	\$0.00159	\$0.00067
Total (1+2+3+4+5+6)	\$0.04688	\$0.04674	\$0.04573

Mr. Hendrix argued that unbundling also put at risk the revenues from local office channel elements [Tr. at 521], but admitted under cross-examination that these losses were offset by the cross connect element paid by collocators [Tr. at 523]. In sum, the amounts at risk due to allowing competitive transport of switched long distance traffic are, as acknowledged by Dr. Beauvais for GTEFL, not significant.

Q In your discussions about the potential revenue impact of expanded interconnection, is it correct to say that the potential negative revenue impact or effect on your Company from allowing competition in the transport segment of the switched access product for intrastate purposes is really pretty small?

A Based on my analysis and the requests that we have received so far -- thus far, then I would state that the revenues, the potential revenue loss from expanded interconnection directly is relatively minor. Now, I mean, that may be a technical point, but I think it's kind of important to separate what's flowing from expanded interconnection, per se, versus other forms of competitive entry.

[Tr. at 251-52.]

Thus, looking beyond the specific customers of these competitive services to the general body of ratepayers, including typical residential customers, the record in this phase establishes that expanded interconnection for dedicated transport of switched traffic will have no material financial effect on the LEC or customers. Local rates will not increase because of expanded interconnection for intrastate special access and private line

services, nor will long distance rates decrease because of reduced switched access charges. In short, competitive transport of switched long distance traffic will not drive the price changes predicted by the LECs.

It is true that competitive pressures in the local markets for both local transport and switching may ultimately require revised pricing, typically envisioned as increased local rates. However, it must be understood that no increase in anyone's rates will be allowed by the Commission unless that increase is justified as fair, just, and reasonable. In short, a dollar decrease in switched access revenues does not mean that the LEC is entitled to a dollar increase in revenues from local rates.

E. Expanded Interconnection and Long-Term Telecommunications Needs

Expanded interconnection for dedicated transport of switched traffic is also in the public interest because it will facilitate meeting the long-term telecommunications needs of the state. These needs include:

- o increasing demand for information services among all types of customers;
- o increasing demand among a variety of customers for broadband telecommunications services;
- o increasing demand for diverse and redundant routing and electronics in telecommunication services; and
- o increasing demand for faster provisioning of services.

These trends suggest that in the future Florida will need a telecommunications infrastructure that is faster, more reliable, more advanced, and more ubiquitous than today's. Florida's long-

term intrastate telecommunications needs should be met by a variety of providers, both competitive and monopoly. The Commission's overriding policy objective should be to establish a competitive environment within which private investment and diversity of supply are allowed to meet Florida's evolving telecommunications needs. Simply put, the Commission should adopt policies that remove barriers to competition in local services. Establishing expanded interconnection is a significant step in the right direction.

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

Position: Yes. The non-affiliated entities prohibition serves no public interest, and actually prevents customers from receiving services from their provider of choice. The public interest demands that all customers be able to receive dedicated and switched services from their provider of choice.

The offering of dedicated and switched services between non-affiliated entities by non-LECs is a key step in the development of local competition. Moreover, robust competition in the local market -- particularly in the provision of telecommunication services over high capacity transport facilities -- is indisputably in the public interest, and AAVs are ready to deliver this competition. Unfortunately, the basic economic fact facing AAVs is that the LECs can load all traffic -- voice and data, local and long distance, dedicated and switched -- onto their transport facilities, while AAVS can only offer a small subset of that universe of services: private line and special access. As long as AAVs are so restricted, there will never be a sufficiently

competitive market. Thus, the "affiliated entities" restriction must be lifted.

Based on the testimony at hearing, it should be clear to the Commission that business customers want the ability to fully exploit the high capacity transport service obtained from the vendor, whether that vendor is a LEC or an AAV. They want their high capacity services to satisfy all of their telecommunications needs. Moreover, businesses do not typically have need for just a single service, such as a private line. [Tr. at 85.] Thus, large businesses, such as Publix, for example [Tr. at 81], are faced with essentially two options: using the LEC or going off the landline network to their own private systems, such as VSAT. [See, generally, Metcalf, Tr. at 56-59, 79-81.] And, as emphasized by Mr. Metcalf, once the business user leaves the public switched network for its own private network, it does not come back. [Tr. at 80.]

Mr. Andreassi for TCG also emphasized that expanded competition in unbundled non-switched services and resold centrex is in the public interest. [Tr. 716.] The resulting enhanced telecommunications infrastructure will be achieved through private investment, and not with incentives that transfer risk to the ratepayers. [Tr. at 717.] Moreover, competition brings diversity of supply which offers business users something the LECs still cannot deliver: operational and strategic security. [Tr. at 717.]

Not only should the Commission grant AAVs the authority to load various types of traffic on dedicated high capacity transport

facilities, but the Commission should do so immediately. The urgency here is due to the anticompetitive strategy being pursued by the LECs. As testified to by Mr. Metcalf based on his experience in dealing with the LECs on behalf of large users:

[T]he LECs are using this time of exclusive provisioning of bundled services within DTS to launch preemptive strategies for tying up large customers to long term contracts. This lessens the market available to AAVs when they are finally able to compete for a user's total business. If enough of the market is tied up by long-term contracts, there may not be enough to ever establish real competition or competitors for this type service.

[Tr. at 61.]

The position of at least one LEC appears to confirm Mr. Metcalf's assessment. For example, in his rebuttal testimony Dr. Beauvais for GTEFL suggested how its proposed LTR restructure could be improved:

This price structure could be made even more efficient by granting the LECs additional pricing flexibility such as volume-discounted switched services and term discounts.

[Tr. at 876 (emphasis added).]

In fairness to Dr. Beauvais, his testimony addressed LTR restructure and not current pricing strategy in other local services such as private line and special access where AAVs now compete. Nevertheless, it reflects an understandable and natural tendency of the LEC to think in terms of cutting special deals to keep business customers committed to its network for extended periods.

There are several unsettling aspects of this "special deal" approach. First, by definition it is discriminatory -- i.e., it offers different prices for similar services among similarly situated customers based on the actual or projected presence of an AAV. Next, the pricing of the services loaded or bundled over the high capacity facility invites cross-subsidization and anticompetitive pricing. For example, a LEC could easily bundle common tariffed services with a private line service so that the tariffed services are priced according to the tariff but the private line is priced as an incremental service under a CSA, and so that the total package is taken under long term commitment. This would allow the LEC to set an absurdly low price for the private line while still claiming that the price covered the incremental costs of the private line service. The customer would thus be locked in to a long-term contract.

Faced with this type of pricing strategy under its current restrictions, an AAV has only one choice if it is to respond: challenge the deal in an appropriate forum. Unfortunately, if successful such a challenge would potentially limit the LEC in its attempts to fully and efficiently use its resources. Intermedia does not believe this any wiser than limiting the AAV from fully exploiting its facilities in competition with the LEC. Rather, the preferable approach is for this Commission to: (1) establish expanded interconnection on workable terms; (2) establish simple ground rules for LECs to follow in the pricing and marketing of high capacity transport services; and (3) remove all barriers to the AAV carrying various traffic over its high capacity facilities.

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

Position: Yes.

A. Chapter 364 Is Pro-Competitive

As noted in the discussion under Issue 4, the Legislature has emphasized in Chapter 364 that its provisions are to be interpreted expansively to promote competition that is in the public interest. For example, in Section 364.01(3)(c), Florida Statutes, the Commission is directed to exercise its exclusive jurisdiction to:

Encourage cost-effective technological innovation and competition in the telecommunications industry if doing so will benefit the public by making modern and adequate services available at reasonable prices.

This Commission has already ruled and the parties have acquiesced that the Commission may order some form of expanded interconnection for some purposes. Thus, the only question presented in this phase is whether the contemplated use of the expanded interconnection is permissible under the chapter generally or whether specific provisions of the chapter restrict some contemplated use of the interconnection.

B. Statutory Review Must Be Of Specific Contemplated Use

Once again, it becomes apparent that the specific uses of the interconnection arrangement must be reviewed to answer this statutory question. Nebulous framing of the uses -- such as "for switched access" -- offers no competent predicate for resolving the statutory issue. To reiterate, the contemplated use of the interconnection is to allow dedicated transport of intrastate traffic from the point of interconnection with the central office

to the IXC's POP. As suggested above, in general Chapter 364 supports the contemplated usage; moreover, as will be shown, no specific statutory provision prohibits it.

C. Applicable Statutory Provisions

The only two statutory provisions within the chapter that appear applicable to the legality of the contemplated dedicated transport are Section 364.335(3) and Section 364.337. The former allows the Commission to grant authority to AAVs to compete with the LEC in providing local private line service, while the latter allows the Commission to grant IXCs authority to provide long distance service and AAVs authority to provide certain interexchange services. Unfortunately, neither of these sections are models of clarity as applied to AAVs. Nevertheless, as will be shown below, there can be no reasonable doubt that proper entities achieving expanded interconnection with the LEC may provide dedicated transport of switched long distance traffic to the IXC's POP.

D. Section 364.335: Local Service Authority

Section 364.335, Florida Statutes, authorizes the Commission to grant telecommunication companies authority to provide local service. A major feature of this section is that it prohibits with certain exceptions the Commission from granting companies authority to compete with the LEC or to duplicate its facilities. Section 364.335(3) establishes these exceptions, as follows:

The commission may not grant a certificate for a proposed telecommunications company . . . which will be in competition with or duplicate the local exchange services provided by any other telecommunications

company unless it first determines that the existing facilities are inadequate to meet the reasonable needs of the public and it first amends the certificate of such other telecommunications company to remove the basis for competition or duplication of services. The commission may, however, grant such a certificate for a proposed telecommunications company, . . . which will be providing . . . private line service by a certified alternative access vendor, without determining that existing facilities are inadequate to meet the reasonable needs of the public and without amending the certificate of another telecommunications company to remove the basis for competition or duplication of services. For the purposes of this section, "private line service" means any 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.

[Emphasis added.]

If dedicated transport of switched long distance traffic to the IXC's POP is viewed to be competitive local service, then two things are clear: first, Section 364.335(3) controls, and second, this dedicated transport meets the statutory definition of private line.

E. Transport Is Private Line

The transport segment of local transport is (a) point to point, (b) for the exclusive use of the subscriber, i.e., the IXC, and (c) for the transmission of a public telecommunications service [Guedel, Tr. at 180-81; Andreassi, Tr. at 767]. Specifically, the AAV would take the switched long distance traffic delivered to it through the interconnection arrangement and transmit it down a dedicated telecommunications pipeline to the IXC's POP. The AAV would have no ability to terminate the traffic anywhere other than the IXC's POP.

F. LEC Objections

It is Intermedia's understanding that the LECs believe that dedicated transport is not allowed under statute. Because none of the parties have had an opportunity to review each other's legal arguments, Intermedia is placed in the position of having to speculate as to what their objections might be under Section 364.335. Intermedia can think of only two possible objections. These are addressed below.

1. Objection To Transport As Private Line

First, as suggested by Dr. Beauvais for GTEFL, dedicated transport does not fit the historical definition of private line. This is correct, but also irrelevant. What is critical is that dedicated transport meets the statutory test, not some definition of private line adopted by a LEC in its tariff. Moreover, there is really no tension between the LEC's historical view of transport and today's approach of dedicated transport. For the first time, dedicated transport has been unbundled from the other elements -- namely switching and local channel elements -- with which it was part of a switched product. This watershed event of unbundling is what allows the private line aspect of the product to be viewed for what it is: a type of private line.

2. IXC And Other Businesses Are End-Users Within The Meaning of The Statute

Next, it is possible that the LECs may argue that an IXC is not an end-user within the meaning of the statute. It is clear that the term "end-user" often means the person using the telephone facility to place a call, and it is equally clear that an IXC does

not fit this narrow view of the term. The problem with this interpretation is that under it only natural persons could subscribe to AAV private line services, the fact that businesses are the primary subscribers to private line notwithstanding. Today, Intermedia and other AAVs are providing local private line services to businesses and it has never been suggested that this conduct violates the "end-user" restriction. Certainly, IXC's are businesses and there is no reasonable basis to distinguish IXC's from other businesses in allowing them to subscribe to private line services.

The more rational and consistent interpretation of the term "end-user" in Section 364.335 is "the subscriber that uses the service." Under this approach, both natural persons and businesses would qualify to use private lines, which would shift the focus of the statutory interpretation from the entity using the service to the nature of the service being used.

In sum, dedicated transport of switched long distance traffic meets the statutory definition of private line service under Section 364.335. If such transport is viewed to be a local service, then AAVs are indeed allowed to use expanded interconnection for the purpose of providing that service.

G. Dedicated Transport As Interexchange Service

If dedicated transport is not viewed to be a local service, but rather an interexchange service, then some may suggest that such service must be authorized under Section 364.337. That section provides as follows:

(1) When the commission grants a certificate to a telecommunications company to provide intrastate interexchange telecommunications service, the commission, if it finds that such action is consistent with the public interest, may:

(a) Prescribe different requirements for the company than are otherwise prescribed for telecommunications companies; or

(b) Exempt the company from some or all of the requirements of this chapter and s. 350.113.

(2) In determining whether the actions authorized by subsection (1) are consistent with the public interest, the commission shall consider:

(a) The number of firms providing the service;

(b) The geographic availability of the service from other firms;

(c) The quality of service available from alternative suppliers;

(d) The effect on telecommunications service rates charged to customers of other companies; and

(e) Any other factors that the commission considers relevant to the public interest.

(3)(a) If the commission finds the provision of alternative access vendor services to be in the public interest, it may authorize the provision of such service. For the purposes of this section, "alternative access vendor services" means the provision of private line service between an entity and its facilities at another location or dedicated access service between an end-user and an interexchange carrier by other than a local exchange telecommunications company, and are considered to be interexchange telecommunications services.

(b) No person shall provide alternative access vendor services without first obtaining a certificate from the commission.

(4) Each amount paid by an interexchange telecommunications company or a pay telephone company to a telecommunications company providing local service use of the local network shall be deducted from gross operating revenues for purposes of determining the amount of the regulatory fee assessed the interexchange telecommunications company pursuant to s. 350.113 or s. 364.336.

As seen above, Section 364.337 gives the Commission the statutory authority to authorize the provision of competitive interexchange services. Under this section, entities receive certificates to operate as IXC's or AAV's, or both. With respect to

the types of interexchange services these types of carriers may provide, only AAVs are specifically restricted to interexchange dedicated transmission path services.

H. IXCs May Provide Transport

At the outset, an IXC may enter into a collocation agreement with the LEC and choose to provide dedicated transport to other IXCs. Not one word in Chapter 364 suggests that this type of transport is prohibited. Intermedia holds both an IXC certificate and an AAV certificate. Thus, if transport is considered an interexchange service, then Intermedia, as an IXC, can provide this service. It need not address the authority of AAVs without an IXC certificate to provide transport.

I. AAVs May Provide Transport

If an entity holds only an AAV license and dedicated transport is viewed as an interexchange service, the AAV is nevertheless authorized to provide such service under Section 364.337(3). First, a fair reading of that subsection suggests that its purpose is to ensure that an AAV does not engage in switching. It is clear that dedicated transport does not involve switching; indeed, as already established, dedicated transport meets the statutory definition of private line used in Section 364.335 because it is a dedicated, point to point transmission for the exclusive use of the subscriber.

Under Section 364.337(3), the only objection that could possibly be raised is that the collocation arrangement does not allow the AAV to transport the switched traffic from the IXC's

facilities at one location to its facilities at another location. This is not a valid objection, however.

1. Transport Configurations May Vary

First, whether the IXC has its facilities at the point of interconnection with the LEC depends on the arrangements made between it and the AAV. Thus, no general prohibition can be reasonably made pursuant to Section 364.337(3). For example, the IXC could choose to collocate with the AAV placing its equipment at the interface with the LEC's switch.

Moreover, the LECs have insisted that (a) virtual collocation can have the same functional and economic characteristics as physical collocation, and (b) entities collocating with the LECs should be required to allow collocation by others. Consequently, the LECs cannot reasonably argue against an IXC choosing to interconnect its facilities with the LEC through a physical or virtual collocation arrangement with the AAV. Thus, an AAV could grant an IXC virtual or physical collocation with it for the purposes of ensuring that the AAV's transport service was between the IXC's facilities at the point of interconnection and its facilities at its POP.

2. Strained Statutory Interpretation

In sum, to interpret Section 364.337(3) as prohibiting AAVs from providing dedicated transport of switched traffic produces an inconsistent result, and therefore must be rejected. Specifically, this interpretation would initially prohibit AAVs from providing the transport while other entities, such as IXCs, could. This

interpretation is unreasonable because it distinguishes between two types of carriers within the same section where there is no justification to do so and no prohibition against an entity holding status as both.¹ Consequently, this forced interpretation of Section 364.337(3) will not prohibit AAVs from providing transport; rather, it will simply prompt AAVs to obtain IXC certificates.

J. Conclusion

In this issue, Intermedia has argued that Chapter 364 in general encourages competitive provision of dedicated transport services, and that no provision of the chapter prohibits transport of switched traffic. If such transport is viewed as local service, then it qualifies as a private service within the meaning of Section 364.335(3), and may be provided by an AAV. If the transport is viewed as an interexchange service, then it may be provided by both IXCs and AAVs under Section 364.337.

In addition to reviewing the statutory basis for allowing transport of switched traffic, the Commission should also consider a fundamental fact about this service: it is no different than a number of other transport services currently being provided

¹The importance of establishing the same ground rules for all entities that interconnect was noted by GTEFL witness Dr. Beauvais when he addressed the public interest issue. Dr. Beauvais testified that for expanded interconnection to be in the public interest, certain pricing and regulatory reforms are needed. Among other things, these reforms must include:

[R]ecognition that a firm can simultaneously be an ESP and an AAV, or an AAV and an IXC. Any rules established by the Commission should be blind to the identity of the party. The LEC does not have the ability, nor does it want to, perform the duties of the telephone police.

competitively. For example, as testified to by Mr. Rock for Sprint, currently IXCs provide for themselves and each other POP to POP transport. [Tr. at 700.] As Mr. Metcalf pointed out, dedicated transport of switched traffic is provided from business customers to IXCs such as AT&T and Sprint. [Tr. at 78.] And finally, as explained by GTEFL's witness Kirk Lee, "switched direct transport and special transport services should be rated the same because they are equivalent services." (emphasis added) [Tr. at 308.] Thus, "switched direct transport and special transport services" should also be regulated the same with respect to their provision by AAVs because they are indeed equivalent services.

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

Position: Yes, given federal precedent. ICI nevertheless maintains that mandated occupation of used and useful LEC property for the very purpose for which it has been declared used and useful--i.e. provision of telecommunication service--is not a taking under a regulatory scheme that creates a monopoly for the LEC and provides both due process and fair compensation for the occupation.

This particular issue has been fully briefed by the parties in three separate post-hearing pleadings in Phase I of the docket. Intermedia will not reiterate these legal arguments here. In short, Intermedia believes that mandated occupation of used and useful LEC property for the very purpose for which it has been declared used and useful -- i.e., provision of telecommunication service -- is not a taking under a regulatory scheme that creates a monopoly for the LEC and provides both due process and fair compensation for the occupation.

ISSUE 8:

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

Position: If in response to recent federal precedent this Commission determines that physical collocation is no longer the appropriate standard, then it should prescribe standards for virtual collocation that ensure the latter is at least comparably efficient as the former.

In Phase I of this proceeding, the Commission required the LECs to provide physical collocation. The federal court recently overturned the FCC's mandate for physical collocation on an interstate basis. On remand, the FCC ordered virtual collocation, while continuing to allow physical collocation by agreement. If in response this Commission determines that physical collocation is no longer the appropriate standard, then it should prescribe standards for virtual collocation governing at least the following: (a) cost support for the LECs' rate elements and the tariff generally; (b) provisioning and maintenance intervals of collocator equipment; (c) ownership of collocator equipment; (d) right of the collocator to supply its own equipment; and (e) training costs of LEC personnel.

Ideally, the prescribed standards would ensure that virtual collocation is technically and economically comparable to physical collocation. As observed by Mr. Andreassi for TCG, for competition to unfold to the benefit of the customers, the LECs must not be allowed to dilute the quality of interconnectors' services through the imposition of the LEC's standards. [Tr. at 729, 737-39.] For example, an interconnector may achieve a competitive advantage over the incumbent LEC through faster response time to outages. Physical collocation allows the interconnector to preserve this

quality of service improvement. Without appropriate standards, however, virtual collocation does not.

For this reason, Intermedia urges the Commission to reject the LECs' apparent positions that negotiation is sufficient to establish appropriate virtual collocation standards [GTEFL, Tr. at 209, 244, 246; see also, generally, Beauvais, Tr. at 191-209] or that standards good enough for the LEC are good enough for the interconnector [Cross-examination by Southern Bell, Tr. at 737-39]. Rather, the Commission should establish standards to insure that the efficiency of virtual collocation is at least comparable to that of physical collocation.

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

Approved Stipulation:

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?

Position: For consistency, any LEC office designated for interstate expanded interconnection should be designated for intrastate expanded interconnection. This would include central offices, serving wire centers, and tandem switches.

ISSUE 11:

Which entities should be allowed expanded interconnection for switched access?

Approved Stipulation:

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?

Position: Yes. As in Phase I, Intermedia is willing to provide reciprocal interconnection arrangements for LECs or other parties, under similar terms and conditions as those established by the LECs.

ISSUE 13:

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

Approved Stipulation:

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?

Position: No.

A tariffing requirement for competitive access providers is superfluous. A tariff is, in effect, a unilateral offer by the monopoly provider which it is obligated to honor if a customer accepts the terms of the offer. Because tariffs are reviewed by the Commission to ensure that they are in the public interest, the resulting contract between the customer and the monopoly provider is fair, just, and reasonable. Thus, tariffs can prevent the monopoly provider from abusing its dominant position with respect to its customer, while ensuring that the monopoly is fairly treated. Tariffs also can prevent the monopoly provider from engaging in anticompetitive pricing. If competition between the LEC and an AAV is to determine which can bleed the longest, one does not need a crystal ball to see which will prevail.

The above concerns that justify tariffing the material elements of the monopoly's offering do not apply to an AAV. The AAV does not enjoy a dominant position with respect to its potential customers. On the contrary, its potential customers are savvy business users who drive hard bargains in negotiations. Likewise, the AAV has no ability and no incentive to price its services below costs, because it has no ability to make up these losses through inter-product subsidies.

In the AAV docket (Docket No. 890183-TL) that resulted in Order No. 24877, the LECs argued that AAVs should file tariffs. However, based in part on the considerations reflected above, this

Commission determined that AAVs should be exempted from a tariffing requirement. This approach has proved successful, and Intermedia knows of no reason to change that policy now. And finally, in Phase I of this docket, this Commission determined that AAVs and other interconnectors need not file tariffs for special access and private line services. As the Commission observed in the Phase I Order, ". . . we are persuaded by the parties who advocate less, not more, regulation" [Phase I Order, at 30.]

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

Position: No. Introduction of these flexible intrastate pricing plans is premature and anticompetitive. Given the substantial pricing flexibility presently afforded to the LECs in the form of contract serving arrangements and individual case basis pricing, additional flexibility is unnecessary. However, if an alternative pricing plan is to be approved, it should mirror the "zone density" approach already approved by the FCC, and should be contingent upon the elimination of CSAs and ICBS.

Introduction of additional flexible intrastate pricing plans is premature and unnecessary. No significant loss of revenues to the LECs is expected to result from approval of switched access expanded interconnection, since such an order will open only a fraction of the intrastate switched access market to competition. [Andreassi, Tr. at 710-11.] Given that no imminent revenue shortfall is expected, the public interest in competitive provision of this service favors continuance of the present pricing scheme. [Metcalf, Tr. at 63-67.] While the LECs may demand immediate additional pricing flexibility in order to prevent user departures

to other services, such flexibility will have the long-term result of keeping or knocking competing AAVs out of the arena. [Metcalf, Tr. at 63.]

At hearing, Mr. Hendrix of Southern Bell challenged this approach as "self-serving," complaining that under the present pricing scheme, "the incentive is there to move to other carriers or other vendors to get this service" and that it "is self-serving to . . . get the very best price he [here Witness Metcalf, representing large users] can actually get . . . out in the marketplace." [Tr. at 957.] Mr. Metcalf never denied that his purpose was to promote a system that ensured large businesses optimal prices and service; rather he emphasized that his clients wanted that system to be here today and in the future. This approach serves not only large users such as those represented by Witness Metcalf, but the public generally, by ensuring that the service remains available on a competitive basis.

The Commission's refusal to approve additional pricing flexibility at this time would not leave the LECs at a competitive disadvantage. The LECs would still benefit from the flexibility of CSAs and ICBs, which freely allow the LECs to depart from their tariffed rates. As noted by ICI previously, all that is required under the present system is that a LEC file quarterly reports identifying CSAs made during the preceding three months. The report requires no justification or documentation of the arrangement. Intermedia believes that if asked, the LEC must be prepared to justify the arrangement as covering costs under the

Commission's private line manual. However, as Intermedia understands it, no order determines the process by which the LECs must satisfy the private line manual requirements before the CSAs are made. Rather, the LEC is free to devise methods to quickly approve CSAs. In addition, the types of costs that the LEC is required to consider in pricing its circuits do not differ substantially from those considered by an AAV.

Despite this latitude, the LECs now seek to maximize pricing flexibility by calling for the ability to de-average rates and increase flexibility in timing of price adjustments, in addition to demanding the ability to go off tariff to satisfy what they describe as unique customer demands. [See, e.g., Beauvais, Tr. at 238-39 and 246-47.] Moreover, in Phase I the Commission approved conceptually a zone-density pricing approach.

If the Commission again chooses to allow a new pricing scheme for local transport, it should be on two conditions. First, the LECs' flexible pricing scheme should mirror the zone density scheme established by the FCC for interstate special access and private line services. As noted by Mr. Gillan for IAC, the FCC's zone density pricing schemes allow the LECs to reduce rates for all access customers ". . . closer to costs while maintaining appropriate relationships among transport option and customers." [Tr. at 965.]

Second, the Commission should abolish CSAs and ICBs for the LEC where it offers products pursuant to a zone density scheme. As also noted by Mr. Gillan: "the contract service arrangement . . .

is an anathema to interexchange competition because it presupposes discrimination on a customer-by-customer basis. This form of flexibility is completely unacceptable for a service that is intended to be a wholesale input to the long distance industry." [Tr. at 964.] The FCC does not allow both zone density pricing and individually cut special deals. Moreover, as observed by Witness Gillan, transport is a foundation of the long distance industry and is essentially a commodity. It is thus imperative from the IXC's perspectives that transport pricing be without favoritism. [Tr. at 628.] And, of course, favoritism in LEC pricing means damage to the competitive status of the AAV. Thus, additional flexibility is unnecessary, will injure competition in the long distance industry, and will allow the LECs to cut special deals with customers to knock competitors such as Intermedia out of the market.

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

Position: No position at this time, pending clarification of the status of the proposed intrastate private line and special access expanded interconnection tariffs in light of the prospective refiling of the corresponding interstate tariffs.

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

Position: These tariffs should be approved to the extent that they mirror the LECs' interstate tariffs.

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

Position: No. Please see position on Issue 15.

As addressed in Issue 15, regarding special access and private line, the LECs should be offered flexibility only to the extent that their tariffs track the FCC's zone density pricing approach and are cost-based. Further, if such flexibility is granted, ICBs and CSAs should be eliminated.

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

(a) With the implementation of switched expanded interconnection?

Position: Yes.

(b) Without the implementation of switched expanded interconnection?

Position: Yes.

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:

Position: (c) The intrastate pricing and rate structure of local transport should reflect the underlying cost based structure.

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

Position: No. The intrastate pricing and rate structure of local transport should reflect the underlying cost based structure.

The Commission should not abandon the basic requirement that LEC rates must be cost-based. Intermedia believes that allowing LECs to set prices for transport options that do not track the cost differences between the options will result in disproportionately low contributions to costs from some IXC's and disproportionately high contributions from others. This disproportionate contribution to costs will create a competitive advantage for some IXC's, and thus be anticompetitive.

Moreover, as a vendor of transport services, Intermedia believes that competition in this market should be based on competitors' cost-advantages, not on distorted pricing by the LEC. For example, Intermedia does not want to be drawn into DS-1 markets by artificially high LEC prices where its underlying costs might not justify the competitive effort. Although this approach might generate short term profits, two dangers are inherent. First, the LECs have demanded the ability to cut special deals with customers when an AAV attempts to serve these markets. This introduces the specter of unjust discrimination among customers, as well as anticompetitive conduct by the LECs. Second, even where the LECs do not respond with special deals, this system by definition promotes an inefficient allocation of telecommunication resources among vendors. Thus, the attraction of short term profits

notwithstanding, Intermedia remains convinced that the only way healthy competition will emerge in transport and other dedicated services is for the monopoly provider to honor cost differences in its pricing.

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?

Position: No position at this time.

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

Position: No position at this time.

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?

Position: Yes.

Although Intermedia remains convinced that this Commission may require physical collocation, Intermedia has in this docket emphasized the need for congruency between the policies of the FCC and this Commission. Thus, as a matter of policy, the Commission should revise its previous order and order virtual collocation rather than physical. Please see Intermedia's position on Issue 8 for standards the Commission should address in ordering virtual collocation. In revisiting its Phase I Order, however, the Commission must limit its modifications to only those changes necessary to establish congruency between its policy and the changed policy of the FCC.

ISSUE 24: Should these dockets be closed?

Position: No. These dockets should not be closed until all related issues have been resolved in the federal proceeding.

Respectfully submitted this 12th day of October, 1994.



**PATRICK K. WIGGINS
Wiggins & Villacorta, P.A.
501 East Tennessee Street
Suite B
Post Office Drawer 1657
Tallahassee, Florida 32302
(904) 222-1534**

**Counsel for Intermedia
Communications of Florida, Inc.**

CERTIFICATE OF SERVICE

Docket No. 921074-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 12th day of October, 1994, to the following:

Donna L. Canzano
Division of Legal Services
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

Thomas R. Parker
Kimberly Caswell
GTE Florida Incorporated
P. O. Box 110, FLTC0007
Tampa, Florida 33601

C. Dean Kurtz
Central Telephone Company
of Florida
Post Office Box 2214
Tallahassee, Florida 32316

Peter M. Dunbar
David L. Swafford
Pennington & Haben, P.A.
Post Office Box 10095
Tallahassee, Florida 32302

Michael W. Tye
AT&T Communications
106 East College Avenue
Suite 1410
Tallahassee, Florida 32301

Daniel V. Gregory
Quincy Telephone Company
Post Office Box 189
Quincy, Florida 32351

Charles Beck
Office of Public Counsel
111 West Madison, Suite 812
Claude Pepper Building
Tallahassee, FL 32399-1400

Harris R. Anthony
J. Phillip Carver
c/o Marshall M. Criser, III
150 South Monroe St., Ste. 400
Tallahassee, Florida 32301

Lee L. Willis
Macfarlane Ausley Ferguson
& McMullen
Post Office Box 391
Tallahassee, Florida 32302

Janis Stahlhut
Vice President of Reg. Affairs
Time Warner Communications
Corporate Headquarters
300 First Stamford Place
Stamford, Connecticut 06902-6732

Harriet Eudy
ALLTEL Florida, Inc.
Post Office Box 550
Live Oak, Florida 32060

David B. Erwin
Young, van Assenderp, Varandoe
& Benton, P.A.
Post Office Box 1833
Tallahassee, Florida 32303

Jeff McGehee
Southland Telephone Company
Post Office Box 37
Atmore, Alabama 36504

F. Ben Poag
United Telephone Company
of Florida
P.O. Box 154000
Altamonte Spings, Florida 32716

Teresa Marerro
Teleport Communications Group,
Inc.
1 Teleport Drive, Suite 301
Staten Island, New York 10311

Beverly Menard
c/o Richard Fletcher
GTE Florida Incorporated
106 E. College Ave, #1440
Tallahassee, FL 32301-1740

Kenneth Hoffman
Rutledge, Ecenia,
Underwood, Purnell &
Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302-0551

Vicki Gordon Kaufman
McWhirter, Grandoff & Reeves
315 South Calhoun Street
Suite 716
Tallahassee, Florida 32301

Everett Boyd
Ervin Varn Jacobs
Odom & Ervin
P. O. Drawer 1170
Tallahassee, FL 32302

John A. Carroll, Jr.
Northeast Florida Telephone
Post Office Box 485
MacClenny, Florida 32063-0485

Charles Dennis
Indiantown Telephone System,
Inc.
Post Office Box 277
Indiantown, Florida 34956

Carolyn Mason
Department of Management Serv.
Division of Communications
Koger Executive Center
Building #110
Tallahassee, Florida 32399

Rachel Rothstein
c/o Wiley Law Firm
Interexchange Access Coalition
1776 K Street, NW
Washington, DC 20006

Chanthina R. Bryant
Sprint
3065 Cumberland Circle
Atlanta, Georgia 30339

Douglas S. Metcalf
Communications Consultants, Inc.
P. O. Box 1148
Winter Park, FL 32790-1148

Joseph Gillan
P. O. Box 547276
Orlando, Fl 32854

Richard Melson
Hopping Boyd Green & Sams
P. O. Box 6526
Tallahassee, FL 32314

Laura Wilson
FCTA
P. O. Box 10383
Tallahassee, FL 32302

Michael Henry
MCI Telecommunications
780 Johnson Ferry Road, #700
Atlanta, GA 30342

Patrick K. Wiggins

Patrick K. Wiggins