

950  
an

LAW OFFICES  
**McWHIRTER, REEVES, MCGLOTHLIN, DAVIDSON & BAKAS, P.A.**

JOHN W. BAKAS, JR.  
LINDA C. DARSEY  
C. THOMAS DAVIDSON  
STEPHEN O. DECKER  
LESLIE JOUGHIN, III  
VICKI GORDON KAUFMAN  
JOSEPH A. MCGLOTHLIN  
JOHN W. McWHIRTER, JR.  
RICHARD W. REEVES  
FRANK J. RIEP, III  
PAUL A. STRASKE

100 NORTH TAMPA STREET, SUITE 2800  
TAMPA, FLORIDA 33602-5126

MAILING ADDRESS: TAMPA  
P.O. BOX 3350, TAMPA, FLORIDA 33601-3350

TELEPHONE (813) 224-0806

FAX (813) 221-1854

CABLE GRANDLAW

PLEASE REPLY TO:  
TALLAHASSEE

January 24, 1995

HAND DELIVERED

TALLAHASSEE OFFICE  
315 SOUTH CALHOUN STREET  
SUITE 716  
TALLAHASSEE, FLORIDA 32301

TELEPHONE (904) 222-2525

FAX (904) 222-5606

OF COUNSEL  
CHRISTINE E. EAKLE

ORIGINAL  
FILE COPY

Blanca S. Bayo, Director  
Division of Records and Reporting  
101 E. Gaines Street  
Tallahassee, Florida 32301

Re: In re: Petition for expanded interconnection for alternate access vendors within local exchange company central offices by Intermedia Communications of Florida, Inc.; Docket Nos.: ~~921074-TL~~, 930955-TL, 940014-TL, 940020-TL, 931196-TL, 940190-TL

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of the Interexchange Access Coalition's Motion for Partial Reconsideration, in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

*Vicki Gordon Kaufman*  
Vicki Gordon Kaufman

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- AFB \_\_\_\_\_
- CFE \_\_\_\_\_
- CMU 1 Enclosures
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1 \_\_\_\_\_
- LIN 4 \_\_\_\_\_
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Expanded Interconnection )  
Phase II and Local Transport )  
Restructure. )

DOCKET NO. 921074-TP  
DOCKET NO. 930955-TL  
DOCKET NO. 940014-TL  
DOCKET NO. 940020-TL  
DOCKET NO. 931196-TL  
DOCKET NO. 940190-TL

FILED: January 24, 1995

**MOTION FOR PARTIAL RECONSIDERATION**

On January 9, 1995, the Commission issued Order No. PSC-95-0034-FOF-TP (Final Order) in the above-captioned proceeding. The Interexchange Access Coalition (IAC), composed of five interexchange carriers, participated actively in the local transport restructure portion of this investigation. IAC generally supports the Commission's Final Order and its conclusions on local transport restructure. However, pursuant to rule 25-22.060, Florida Administrative Code, IAC seeks reconsideration of one element of the decision: the Final Order's statement at page 58 that a DS3-DS1 pricing ratio in the range of 14-21 would be presumed reasonable. As explained more fully below, a 14-21 ratio is not supported by the record in this proceeding and is inconsistent with the goals expressed by the Commission in the Final Order.

**I. IAC Generally Supports the Commission's January 9 Final Order.**

Overall, IAC supports the Commission's Final Order and believes it to be a well-reasoned and comprehensive analysis of the issues concerning the pricing of the local transport component of switched access service. In particular, IAC applauds the Final Order's conclusions that the reasonableness of local transport prices must be adjudged

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based on the underlying costs of providing the service and not left to "market-based" pricing. As the Final Order correctly observes:

[I]f a given market is reasonably competitive, market-based prices should not differ significantly from cost-based prices. Because in a truly competitive market, prices are driven towards costs. To the extent that an entity can sustain prices substantially above costs, the market is not effectively competitive.<sup>1</sup>

If competitive alternatives for the transport options were equally available, discriminatory pricing disguised as "revenue neutrality" would not threaten IAC's members. The Commission was correct to recognize this and to prevent it. The danger of discriminatory pricing due to uneven competitive pressures is particularly acute given the Commission's decision that AAVs may not aggregate the traffic of multiple IXC's and qualify for higher capacity options. This determination effectively limits transport competition to the largest IXC's and would, in the absence of appropriate safeguards, guarantee discrimination.

IAC also commends the Commission's adoption of a policy favoring efficient utilization of local exchange carrier (LEC) networks:

For example, the point at which a Tandem Switched transport customer converts to DS1 Service, or a DS1 customer converts to DS3 Service, should be when it is most economical and efficient for the LEC to transport the traffic that way. For that to occur, the LEC prices for each of those options should encourage carriers to choose the appropriate option and to convert at the optimum time.<sup>2</sup>

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<sup>1</sup> Final Order at 54.

<sup>2</sup> Id.

Thus, the Commission's findings that "intrastate pricing and rate structure must reflect the underlying costs and should be designed to encourage efficient utilization of the LEC network"<sup>3</sup> are entirely consistent with IAC's views.

Further, IAC supports the Commission's conclusions regarding the treatment of contribution. While disappointed that the Final Order did not require contribution levels across service options to be strictly identical, IAC believes that the Commission's direction that the relative contribution levels be "reasonably close" should be satisfactory.

Importantly, the Commission recognized that it did not have the information before it to establish reasonable, cost-based transport. Instead, it adopted three guidelines that it will apply to proposed rates:

- (1) . . . [P]ricing . . . should accurately reflect the underlying cost structure. Prices should recover incremental costs and provide a contribution to joint and common costs;
- (2) The relationship between prices for various options should encourage the optimal and most efficient utilization of the LEC network; and
- (3) . . . [C]ontribution levels should not be unreasonably discriminatory or distort demand.<sup>4</sup>

The Commission then directed the LECs to refile their tariffs supported by incremental cost studies to determine the appropriate economic price relationships. Had the Commission stopped there, IAC believes that it would have clearly established the criteria to judge refiled tariffs and obligated the LECs to provide the information to do

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<sup>3</sup> *Id.*

<sup>4</sup> Final Order at 54-55.

so. However, in a later section of the Final Order, the Commission effectively prejudices the result of this investigation by stating that:

We expect efficient cross-over points to fall in ranges between 14 and 21, which is approximately 50-75% capacity utilization at the economic cross-over point.<sup>5</sup>

As explained below, this presumption is totally at odds with the record and unnecessarily prejudices the LECs' filings before they are even made.

**II. The Commission Should Reconsider its Presumption Concerning an Appropriate DS3-DS1 Cross-Over Ratio.**

**A. A Cross-over Ratio Range of 14-21 Is Not Supported By the Record.**

There is no testimony in the record of this proceeding supporting a DS3-DS1 cross-over range of 14-21. In fact, the testimony of both witness Rock (Tr. at 668-69) and witness Gillan (Tr. at 613-617) support higher cross-over points. Mr. Gillan testified:

. . . As I understand Mr. Rock's testimony, he used a short-cut method of just saying the cross-over should be around 22-to-1, and that that would be an approximation of the cost relationships . . . . And what I found in looking at the cost studies in this proceeding is that Mr. Rock's ratio still errs on the side of favoritism towards large carriers, that the actual cost cross-overs are more along 24-to-1 and up.

(Tr. at 614.) No evidence supporting lower cross-over ratios was submitted. Thus, the range set out in the Commission's Final Order cannot be justified based on the record.

Nor does the record support an assumed fill factor of 50-75 percent. The record in this proceeding does indicate a current utilization of the LEC transport networks of at

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<sup>5</sup> Final Order at 58.

least 79 percent. Witness Fred Rock of Sprint testified that the average utilization, or "fill factor," for existing DS3 direct trunked transport is 79 percent. (Transcript at 655-56.) No challenge was raised to this aspect of Mr. Rock's testimony.

In fact, this 79 percent figure was endorsed by BellSouth's witness, Mr. Jerry Hendrix. While describing the cost differences between the DS3 and DS1 options, Mr. Hendrix stated that the fill factor must be considered, expressly relying on Mr. Rock's 79 percent evidence.

And on top of that, which I think the Sprint witness got to, you have the field [sic] factors. He uses a 79.

(Tr. at 485.) Nowhere did Mr. Hendrix attempt to question this 79 percent utilization factor.

Similarly, when cross-examining Mr. Rock, BellSouth's attorney made no effort to challenge the 79 percent fill factor testimony when addressing the issue:

Q. And is it your testimony that the fill factor -- in the case of your testimony you used a 79 percent -- is also an important component in the cost of providing DS1 or DS3 service?

A. Again, I think your accurate cost study is going to reflect that sort of information. I do know that having been involved in a proceeding in another state, that we have been quite conservative toward the side of the local exchange carriers with what 79 percent . . . So utilization is probably much higher than 79 percent, given the evidence that I've seen in other states.

Q. But is it your testimony that utilization, or the level of utilization, is something that ought to be considered?

A. I believe so, yes.

(Tr. at 668-69.) Again, as with the BellSouth witness, the BellSouth cross-examination made express references to the 79 percent fill factor without seeking to rebut or refute

it. No contrary evidence was presented by BellSouth or any other party. As a result, the record of this proceeding contains unquestioned testimony that the current capacity utilization factor is 79 percent. No evidence was presented that supports the 14-21 cross-over range cited in the Final Order as the expected cost-based range and this aspect of the Final Order should be reconsidered.

**B. Cross-over Ratios of 14-21 Are Inconsistent With the Goals of the Final Order.**

The Final Order concluded that "LEC prices should not distort economic demand for the various service options" and that the point at which a local transport customer converts to a higher volume option "should be when it is most economical and efficient for the LEC to transport the traffic that way."<sup>6</sup> Further, the Final Order concluded that the local transport restructure is an improvement over the current system because it reflects the way service is actually provided.<sup>7</sup> These findings and policies are not consistent with pricing that creates a cross-over ratio which encourages only 50 percent network utilization.

The goal of the Final Order for local transport restructure -- to improve network efficiency by encouraging optimum capacity utilization -- cannot be met by permitting cross-over ratios that are unreasonably low. A ratio of 14-to-1 equates to a 50 percent utilization factor, more than a third lower than the current 79 percent figure evidenced in this proceeding. Even a cross-over ratio of 21-to-1, at the top of the range indicated

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<sup>6</sup> Final Order at 54.

<sup>7</sup> Final Order at 59.

by the Final Order, is lower than the cross-over ratios supported by the evidence. Permitting such cross-over ratios will not achieve the Commission's goal of improved efficiency in network utilization. The 14-21 range of cross-over ratios thus is inconsistent with the expressed goals of the Final Order and should be reconsidered.

**C. The Transport Tariffs Should Be Judged When They Are Filed.**

Finally, the Commission's statement that cross-over ratios should be in the 14-21 range indicates a potential judgment as to the reasonableness of the LECs' access transport tariffs in advance of their filing. No indication of an acceptable cross-over range is necessary and, as shown above, the 14-21 range is not consistent with the other elements of this proceeding. The Final Order should be modified to remain silent on the proper cross-over ratio.

**CONCLUSION**

The Final Order found that LEC local transport rates should be cost based and set at levels which encourage efficient utilization of LEC network facilities. The Commission found that DS3-DS1 cross-over ratios should be properly set at points which encourage interexchange carriers "to choose the appropriate option and to convert at the optimum time."<sup>6</sup> IAC supports the Commission in these determinations.

IAC believes, however, that the 14-21 range of cross-over ratios used in the Final Order (as well as the 50-75 percent fill rates which underlies it) is inconsistent with the findings and policies of that Order. The record evidence shows that the cross-

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<sup>6</sup> Final Order at 54.



over ratio should exceed 22-to-1 based simply on existing network utilization factors. Cross-over points below current levels, such as 14-21, cannot be expected to encourage improvements in the efficiency of LEC network utilization. Nor would this represent a movement toward reliance on cost-based rates. Moreover, such a cross-over ratio is not supported by any record evidence and represents a potential prejudgment of an important tariff review issue.

WHEREFORE, the Commission should reconsider that portion of the Final Order which references cross-over ratios in the range of 14-21 to be acceptable. The Commission should modify the Final Order to remove the presumption of reasonableness of the 14-21 cross-over ratios and reserve judgment until it has reviewed the required cost data.

*Vicki Gordon Kaufman*

Vicki Gordon Kaufman  
McWhirter, Reeves, McGlothlin,  
Davidson & Bakas  
315 S. Calhoun Street  
Suite 716  
Tallahassee, Florida 32301  
904/222-2525

and

Danny E. Adams  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
(202) 429-7000

Attorneys for Interexchange Access  
Coalition

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of Motion for Partial

Reconsideration has been furnished by hand delivery\* or by U.S. Mail to the following

parties of record, this 24th day of January, 1995:

Donna Canzano\*  
Division of Legal Services  
Florida Public Service  
Commission  
101 East Gaines Street  
Tallahassee, FL 32301

Lee Willis  
John Fons  
Ausley, McMullen, McGehee,  
Carothers and Proctor  
Post Office Box 391  
227 S. Calhoun Street  
Tallahassee, FL 32302

Southern Bell Telephone  
and Telegraph Company  
Marshall Criser  
Sun Bank Building, Suite 400  
150 South Monroe Street  
Tallahassee, FL 32301

Jack Shreve  
Public Counsel  
Office of the Public Counsel  
111 W. Madison St., Rm. 812  
Claude Pepper Building  
Tallahassee, FL 32399-1400

Michael W. Tye  
106 East College Avenue  
Suite 1410  
Tallahassee, FL 32301

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

Richard Fletcher  
c/o Bev Menard  
GTE  
106 East College Avenue  
Suite 1440  
Tallahassee, FL 32301

Pat Wiggins  
Wiggins and Villacorta  
501 East Tennessee Street  
Suite B  
Post Office Drawer 1657  
Tallahassee, FL 32302

Peter M. Dunbar  
Pennington, Haben, Wilkinson,  
Culpepper, Dunlap, Dunbar,  
Richmond and French  
Post Office Box 10095  
Tallahassee, FL 32302

Janis Stahlhut  
Time Warner Cable  
Corporate Headquarters  
300 First Stamford Place  
Stamford, CT 06902-6732

Teresa Marerro  
Regulatory Counsel  
Teleport Communications  
Group, Inc.  
1 Teleport Drive, Ste. 301  
Staten Island, NY 10311

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

C. Everett Boyd, Jr.  
Ervin, Varn, Jacobs,  
Odoms and Ervin  
305 South Gadsen Street  
Tallahassee, FL 32301

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

F. Ben Poag  
United Telephone Company  
of Florida  
Post Office Box 5000  
Altamonte Springs, FL 32716

Rick Melson  
Hopping, Boyd, Green and Sams  
Post Office Box 6526  
Tallahassee, FL 32314

Michael J. Henry  
MCI Telecommunications Corp.  
780 Johnson Ferry Road  
Suite 700  
Atlanta, GA 30342

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

Floyd R. Self  
Messer, Vickers, Caparello,  
Madsen, Lewis, Goldman & Metz  
Post Office Box 1876  
Tallahassee, FL 32302-1876

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

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

Chanthina R. Bryant  
Sprint Communications  
3065 Cumberland Circle  
Atlanta, GA 30339

Douglas S. Metcalf  
Communications Consultants, Inc.  
631 S. Orlando Ave., Suite 250  
Post Office Box 1148  
Winter Park, FL 32790-1148

Benjamin H. Dickens, Jr.  
Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street, N.W., Suite 300  
Washington, DC 20037-1527

Angela B. Green  
Florida Public  
Telecommunications  
Association, Inc.  
315 South Calhoun Street  
Suite 710  
Tallahassee, Florida 32301

  
Vicki Gordon Kaufman