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Continental Cablevision - Southeastern Region

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January 24, 1996

**ORIGINAL
FILE COPY**

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
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RE: DOCKET NO. 950985-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket is the original and a fifteen copies of the Posthearing Brief of Continental Cablevision, Inc. in the above-referenced proceeding. Copies have been served on the parties of record pursuant to the attached certificate of service.

Also enclosed is a 3-1/2" diskette containing a copy of the brief in WordPerfect format, version 5.2.

Please acknowledge receipt and filing of these documents by date stamping the enclosing duplicate of this letter and returning it to me.

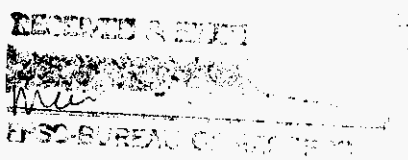
Thank you for your assistance with this filing.

Sincerely,

Donald L. Crosby
Donald L. Crosby

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- OTW

cc: All Parties of Record



DOCUMENT NUMBER-DATE
00926 JAN 25 96
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Resolution of petition(s) to)
establish nondiscriminatory)
rates, terms and conditions)
for interconnection involving)
local exchange companies and)
alternative local exchange)
companies pursuant to Section)
364.162, Florida Statutes)
_____)

DOCKET NO. 950985-TP

FILED: JANUARY 25, 1996

CONTINENTAL'S POSTHEARING BRIEF

Pursuant to Rule 25-22.056, Florida Administrative Code, Continental Cablevision, Inc., on behalf of its affiliates, Continental Fiber Technologies, Inc. d/b/a AlterNet, and Continental Florida Telecommunications, Inc. (collectively "Continental"), respectfully submits the following Posthearing Brief in the above-captioned docket.

I. INTRODUCTION

Last year, the Florida Legislature mandated a sea change in intrastate telecommunications regulation.¹ The most fundamental element was the opening to competition of certain monopoly markets for local telephony.²

The overarching importance of rapidly introducing robust competition into markets now served by virtual monopolists becomes clear in light of the statutory shift from ratebase,

¹Chapter 95-403, Laws of Florida.

²Sections 364.335 & 364.337, Florida Statutes (1995).

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rate-of-return regulation to price regulation.³ Price regulation can only deliver consumer benefits, e.g., improved customer service and lower customer rates,⁴ if market forces are brought into play by competitors. Only after the introduction of true competition can price regulation begin to do its job of governing the behavior of the providers of local service.

The combined absences of traditional regulation and competitive discipline would undermine every aspect of the Florida Legislature's carefully-balanced plan to secure these benefits for consumers. Understanding the synchronicity between competition and price regulation, the Florida Legislature provided for them to take effect simultaneously.⁵

³Section 364.051, Florida Statutes (1995).

⁴Section 364.01(3), Florida Statutes (1995), finds that local competition is in the public interest and enumerates the following benefits:

...[it] will provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure.

⁵The recent legislation clearly couples an incumbent's privilege to elect price regulation with the obligation that the incumbent face competition in its market area, see Section 364.051, Florida Statutes (1995). This relationship is brought into sharp focus by this statute's complementary treatment of large and small incumbents. Even after their market areas became open to competition on January 1, 1996, the large incumbents still are not free to move to price regulation until competitors are authorized to serve those areas. Similarly, in order for a small incumbent to elect price regulation, it must relinquish the protection against competition furnished by Section 364.337(1), Florida Statutes (1995), unless it provides cable programming or video service.

In recognition of its belief that actual competition cannot develop without interconnection, the Florida Legislature required the new entrants and the affected incumbents to interconnect telephone traffic between their customers.⁶ To this end, procedures have been adopted under which the rates, terms and conditions of interconnection are to be established between the new entrants and the incumbents.

The Florida Legislature clearly prefers a solution arrived at independently by the parties, requiring negotiation for at least 60 days as a condition precedent to engaging the Florida Public Service Commission ("Commission").⁷ Only if negotiation is still unsuccessful after this period of time can a party petition the Commission to establish nondiscriminatory rates, terms and conditions of interconnection. Both events have occurred in this docket.

Continental and BellSouth Telecommunications, Inc. ("BellSouth"), along with various other parties to this proceeding, reached a settlement of the issues in this docket. These parties entered into the Stipulation and Agreement ("the Stipulation") that was approved by the Commission in Order No. PSC-96-0082-AS-TP, issued January 17, 1996 ("the Order"). The parties who did not enter into the Stipulation were unsuccessful in their efforts to negotiate a settlement with BellSouth and

⁶Section 364.16, Florida Statutes (1995).

⁷Section 364.162, Florida Statutes (1995).

are, at this time, seeking the Commission's establishment of nondiscriminatory rates, terms and conditions.

II. BASIC POSITION

The Stipulation contains provisions that govern the technical, financial and operational aspects of interconnection. Continental believes that these provisions are reasonable and appropriate for the Commission to adopt in resolution of the issues in this docket. Moreover, Continental believes that the Commission is not at liberty to resolve these issues in any other manner without adopting safeguards against the potentially discriminatory effects that would be created by such action.

III. POSITIONS ON SPECIFIC ISSUES

As used herein, "ALEC" means an alternative local exchange telecommunications company as defined by Section 364.02(1), Florida Statutes (1995).

ISSUE 1: What are the appropriate rate structures, interconnection rates, or other compensation arrangements for the exchange of local and toll traffic between the respective ALECs and BellSouth?

*****CONTINENTAL:** The interconnection rates contained in the Stipulation are reasonable. Continental urges the Commission to adopt these rates and the other interconnection provisions of the Stipulation in resolution of this issue.*******

ISSUE 2: If the Commission sets rates, terms, and conditions for interconnection between the respective ALECs and BellSouth,

should BellSouth tariff the interconnection rate(s) or other arrangements?

CONTINENTAL: No position.

ISSUE 3: What are the appropriate technical and financial arrangements which should govern interconnection between the respective ALECs and BellSouth for the delivery of calls originated and/or terminated from carriers not directly connected to the respective ALECs' network?

CONTINENTAL: The technical and financial arrangements contained in the Stipulation that govern the interconnection of calls originated and/or terminated from carriers not directly connected to the respective ALECs' network are appropriate, and Continental urges the Commission to adopt them in resolution of this issue.

ISSUE 4: What are the appropriate technical and financial requirements for the exchange of intraLATA 800 traffic which originates from the respective ALECs' customer and terminates to an 800 number served by or through BellSouth?

CONTINENTAL: The technical and financial requirements for the exchange of intraLATA 800 traffic contained in the Stipulation are appropriate, and Continental urges the Commission to adopt them in resolution of this issue.

ISSUE 5(a): What are the appropriate technical arrangements for the interconnection of the respective ALEC's network to BellSouth's 911 provisioning network such that the respective

ALECs' customers are ensured the same level of 911 service as they would receive as a customer of BellSouth?

*****CONTINENTAL:** The technical arrangements for the interconnection of the respective ALEC's network to BellSouth's 911 provisioning network contained in the Stipulation are appropriate, and Continental urges the Commission to adopt them in resolution of this issue.***

DISCUSSION: Additionally, Continental urges the Commission to adopt the policy that the respective ALECs may provide trunks directly to the provider of emergency services.

ISSUE 5(b): What procedures should be in place for the timely exchange and updating of the respective ALEC's customer information for inclusion in appropriate E911 databases?

*****CONTINENTAL:** The procedures provided in the Stipulation for exchanging and updating customer information for inclusion in E911 databases are appropriate, and Continental urges the Commission to adopt them in resolution of this issue.***

ISSUE 6: What are the appropriate technical and financial requirements for operator handled traffic flowing between the respective ALECs and BellSouth including busy line verification and emergency interrupt services?

*****CONTINENTAL:** The respective ALECs and BellSouth should mutually provide each other busy line verification and emergency interrupt services. To the extent this issue is dealt with in the Stipulation, Continental urges the Commission to adopt the

provisions relating to operator-handled traffic that are contained there.***

ISSUE 7: What are the appropriate arrangements for the provision of directory assistance services and data between the respective ALECs and BellSouth?

CONTINENTAL: BellSouth should include the ALECs' customers' primary listings (residence and business listings) and yellow page (business) listings in its directory assistance database at no charge. To the extent this issue is dealt with in the Stipulation, Continental urges the Commission to adopt the directory assistance provisions contained there.

ISSUE 8: Under what terms and conditions should BellSouth be required to list the respective ALECs' customers in its white and yellow pages directories and to publish and distribute these directories to the respective ALECs' customers?

CONTINENTAL: To the extent that directory issues are dealt with in the Stipulation, Continental urges the Commission to adopt the directory provisions and procedures contained there.

DISCUSSION: BellSouth should include the respective ALECs' customers' primary listings in the white page and yellow page directories, distribute directories to the customers of each and recycle all customers' directory books at no charge. BellSouth and the respective ALECs should work cooperatively on issues concerning lead time, timeliness, format, and content of list information.

ISSUE 9: What are the appropriate arrangements for the provision of billing and collection services between the respective ALECs and BellSouth, including billing and clearing credit card, collect, third party and audiotext calls?

*****CONTINENTAL:** To the extent that billing and collection services are dealt with in the Stipulation, Continental urges the Commission to adopt the arrangements contained there which relate to such services.***

DISCUSSION: The respective ALECs and BellSouth should bill and clear credit card, collect and third party calls (calls where the recording company is different from the billing company) through Centralized Message Distribution Service (CMDS) provided by BellSouth.

ISSUE 10: What arrangements are necessary to ensure the provision of CLASS/LASS services between the respective ALECs and BellSouth's networks?

*****CONTINENTAL:** To the extent that issues concerning the provisioning of CLASS/LASS services are dealt with in the Stipulation, Continental urges the Commission to adopt the provisions contained there which relate to such services.***

DISCUSSION: The respective ALECs and BellSouth should provide LEC-to-LEC Common Channel Signalling (CCS) to each other in conjunction with all traffic, where available, in order to enable full interoperability of CLASS features and functions. All CCS signalling parameters should be provided, including ANI, Originating Line Information (OLI) calling party category, charge

number, etc. All privacy indicators should be honored. The respective ALECs and BellSouth should cooperate on the exchange of Transactional Capabilities Application Point (TCAP) messages to facilitate full interoperability of CCS-based features between their respective facilities. CCS should be provided Signal Transfer Point to Signal Transfer Point.

ISSUE 11: What are the appropriate arrangements for physical interconnection between the respective ALECs and BellSouth, including trunking and signalling arrangements?

CONTINENTAL: The physical interconnection arrangements and procedures contained in the Stipulation are appropriate, and Continental urges the Commission to adopt them in resolution of this issue.

ISSUE 12: To the extent not addressed in the number portability docket, Docket No. 950737-TP, what are the appropriate financial and operational arrangements for interexchange calls terminated to a number that has been "ported" to the respective ALECs?

CONTINENTAL: The financial and operational arrangements and procedures concerning such calls to "ported" numbers contained in the Stipulation are appropriate, and Continental urges the Commission to adopt them in resolution of this issue.

ISSUE 13: What arrangements, if any, are necessary to address other operational issues?

***CONTINENTAL: The procedures for resolving operational issues, as they arise, which are contained in the Stipulation are

appropriate, and Continental urges the Commission to adopt them as the appropriate method of resolving such issues in resolution of this issue.***

ISSUE 14: What arrangements, if any, are appropriate for the assignment of NXX codes to the respective ALECs?

CONTINENTAL: The arrangements for assigning NXX codes contained in the Stipulation are appropriate, and Continental urges the Commission to adopt them in resolution of this issue.

IV. IMPLEMENTATION OF THE NEW LEGISLATION

A major reason supporting Continental's belief that the Commission should adopt the Stipulation's interconnection arrangements to resolve the issues listed above is the statutory proscription of discrimination. Only by taking this step may the Commission be assured of carrying out its mandate to establish nondiscriminatory rates, terms and conditions for interconnection. The Florida Legislature was sufficiently concerned with the prospect of discrimination that it prohibited interconnection discrimination at 5 locations in the recent legislation.⁸

If the Commission does not take this recommended action, but instead approves one set of interconnection provisions for

⁸See subsections (2) & (3) of Section 364.16, Florida Statutes (1995) (new entrants and incumbents, respectively, must interconnect their facilities with those of other local service providers on a nondiscriminatory basis), and subsections (2), (3) & (6) of Section 364.162, Florida Statutes (1995) (upon petition, the Commission must set nondiscriminatory rates, terms, and conditions of interconnection).

stipulating ALECs and establishes another applicable only to non-stipulating ALECs, then it will necessarily assume a heavy burden of complying with these discrimination prohibitions. The record of this proceeding offers no evidence that the function of interconnecting with BellSouth's facilities differs in any respect from ALEC to ALEC. Indeed, the only conclusion that may be drawn from the record is that all of the ALECs who are parties to this proceeding are similarly situated in seeking interconnection with BellSouth's facilities.

Continental's concern has been triggered, in large measure, by the Order. While the Order reaches the undoubtedly correct conclusion by approving the Stipulation, we are troubled by dicta contained therein. The language of the Order indicates a dangerous misinterpretation by the Commission of its statutory obligations in implementing the new legislation.

Our first concern relates to the Order's explanation of the effect of the Commission's approval of the Stipulation upon the outcome of the number portability proceeding, Docket No. 950737-TP. It is worth bearing in mind that the Stipulation was signed prior to the Commission's reaching its decision in that docket.

The Order observes that the Stipulation's recurring monthly rates for "ported" numbers exceeds the "benchmark" rates adopted later by the Commission in the number portability proceeding. It then explains that the Commission "explicitly considered the benchmark rates as price floors, thus allowing for higher negotiated rates as part of a larger package." Order, page 3.

Continental submits that this is an unusual approach to establishing "benchmark" rates: setting floors below negotiated rates after the parties have reached a compromise on rates and making the lower prices available to non-agreeing parties without making them available to the agreeing parties. It certainly would be helpful to negotiating parties to know the Commission's "benchmark" rates which are intended to be "price floors" while they are negotiating. Parties could then make informed decisions with knowledge of the available options.

On the other hand, the Commission's setting "benchmark" rates in the reverse fashion espoused by the Order not only is clearly discriminatory but also thwarts the intent of the Florida Legislature by undermining the negotiating process. Unless the Commission assures that the nondiscriminatory rates, terms and conditions that it establishes are made available to all parties, the message being sent is: "Don't settle because you can only agree to higher prices now and disqualify yourself for lower prices set later."

Continental submits that such a message will have a negative impact on present and future negotiations between the new entrants and the incumbents. Such a result flies in the face of legislative intent because it effectively wipes out the statutory preference for negotiated settlements.

The Order offers, as the Commission's rationale for the discrimination in number portability rates, the opinion that an individual rate must be viewed as part of a "larger package" and

"in conjunction with all other provisions of the Agreement."⁹ In our view, asserting this rationale in support of Commission-imposed discrimination begs the question of its applicability in a case where a majority of the negotiated rates exceed their respective "benchmark" rates. Accordingly, should the Commission reject Continental's recommendation to adopt the Stipulation's interconnection provisions here, the "large package" theory would fail to provide an acceptable rationale for discrimination.

Additionally, Continental is alarmed by the Order's speculation about the effect of the Stipulation's approval on the resolution of issues in this docket. At pages 4 & 5 of the Order, the Commission states:

Approving the settlement as to those parties that signed creates the possibility that there may be two different regimes for local exchange competitors competing with BellSouth. Those entities that signed the agreement would have one set of rates, terms and conditions for Universal Service/Carrier of Last Resort, Number Portability, Interconnection, and Unbundling and Resale, while those that did not sign the agreement would receive the rates, terms and conditions set by the Commission after hearing.

Following this "two-different-regime" theory will lead the Commission down the path to discrimination, causing it to violate its statutory obligations.

The Commission is clearly aware of the danger, stating:

Two differing regimes of rates, terms and conditions for competitors raises the question of whether we would be endorsing discriminatory rates, terms and conditions that are contrary to the provisions for interconnection and resale.

⁹Order, pages 3 & 4.

Id. However, after discussing its role after negotiations fail, the Commission raises the troubling question found at the end of this path, saying:

..., where portions of the controversy are negotiated by some parties and not all, it is not clear that differing results based on negotiations versus litigation run afoul of the nondiscrimination provisions. Such differences do not appear at this point to be *clearly unreasonably discriminatory*.

Id. (Emphasis Supplied.)

The Commission correctly limited its speculation about discrimination to matters known at the time the Order was issued. At this juncture, however, the Commission must implement the new legislation in a manner that will avoid running afoul of its nondiscrimination provisions.

Continental cannot concede that the standard to be applied is whether differences are "clearly unreasonably discriminatory." The Florida Legislature left no room for discrimination, reasonable or otherwise, in its direction to the Commission to set nondiscriminatory rates, terms, and conditions of interconnection. We believe the Commission should resist the temptation to interject such concepts as "reasonable versus unreasonable" and "due versus undue" into the Florida Legislature's clear prohibition of all discrimination.

Interconnection deals with the price that a new entrant will pay an incumbent for a function that is essential to the new entrant's ability to compete. This fact raises anti-competitive dangers, easily separating discrimination in interconnection arrangements from the more traditional discrimination between and

among customers. Continental urges the Commission to eschew any reliance on precedents developed under the former ratebase, rate-of-return style of regulation for guidance in the new competitive marketplace.

Finally, the Order makes a disturbing attempt to avoid the whole question of discrimination as part of the Commission's rate-setting responsibility by leaving the matter to the complaint process, asserting:

If any affected party believes that such separate regimes are discriminatory, then such party can file a complaint and the question can be addressed in a factual context rather than in the abstract.

Order, page 5. The Florida Legislature would obviously have not gone to such lengths to assure that competition would commence as soon as possible after the beginning of this year if it intended for questions of discrimination to be resolved in a complaint process.

V. CONCLUSION

Continental urges the Commission to resolve the issues in this docket by adopting the rates, terms and conditions for interconnection contained in the Stipulation that has been approved by the Commission. Should the Commission not accept this recommendation, Continental urges the Commission to deal with the question of discrimination between the two different sets of rates, terms and conditions of interconnection approved and established by making them available to all parties.

RESPECTFULLY SUBMITTED this 25th day of January, 1996.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of Continental's Posthearing Brief were furnished by overnight delivery on the 24th day of January, 1996, to the following:

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