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Florida Cable Telecommunications Association

Steve Wilkerson, President

January 25, 1996

ORIGINAL
FILE COPY

VIA HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

RE: Docket No. 950985-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are an original and fifteen (15) copies of Florida Cable Telecommunications Association, Inc.'s ("FCTA") Posthearing Brief. Copies have been served on the parties of record pursuant to the attached certificate of service.

Also enclosed is a copy on a 3-1/2" diskette in WordPerfect format, version 5.1.

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

Thank you for your assistance in processing this filing.

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Yours very truly,

Laura L. Wilson

Laura L. Wilson
Vice President, Regulatory Affairs &
Regulatory Counsel

Enclosures

cc: All Parties of Record
Mr. Steven E. Wilkerson

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DOCUMENT NUMBER-DATE
00949 JAN 25 96
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of Petition(s) to establish)
non-discriminatory 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

FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION, INC.'S
POSTHEARING BRIEF

The Florida Cable Telecommunications Association, Inc. ("FCTA") pursuant to Order No. PSC-95-1084-PCO-TP and Rule 25-22.056, Florida Administrative Code, respectfully submits to the Florida Public Service Commission ("Commission") its posthearing brief in the above-captioned docket.

I. BASIC POSITION

The Stipulation and Agreement approved by the Commission in Order No. PSC-96-0082-AS-TP should govern the technical, financial and operational aspects of interconnection for MCIMetro and MFS. The agreement is a reasonable compromise between the position of BellSouth and that of the petitioners. The terms of the agreement are appropriate for purposes of facilitating the introduction of local competition in BellSouth's territory for two years.

DOCUMENT NUMBER-DATE
00949 JAN 25 1996 1307
FPSC-RECORDS/REPORTING

II. ISSUES

ISSUE 1: **What is (are) the appropriate rate structure interconnection rate(s) or other arrangements for the exchange of local and toll traffic between Teleport and Southern Bell?**

***POSITION:** The appropriate interconnection arrangements are those arrangements contained in the BellSouth Stipulation and Agreement filed on December 11, 1995 in this docket as approved by the Commission in Order No. PSC-96-0082-AS-TP issued January 17, 1995.*

DISCUSSION: The Commission should approve the interconnection terms contained in the agreement as a reasonable and nondiscriminatory compromise for the purpose of facilitating the introduction of local competition in BellSouth's territory. Such action is consistent with at least three primary statutory principles that the Commission should be guided by in making its determination in this proceeding. First, interconnection arrangements approved by the Commission must be nondiscriminatory. Second, the Commission must promote the widest possible end user choice among competing suppliers. Third, the Commission must act consistent with the legislative intent to encourage negotiated settlements. Each of these principles is discussed below.

A. Establish Non-discriminatory Interconnection Arrangements.

The specific provisions of law governing this proceeding to set the terms of local interconnection requires that Commission-approved arrangements must be nondiscriminatory. The law provides:

Section 364.16(2)

Each alternative local exchange telecommunications company shall provide access to, and interconnection with, its telecommunications services to any other provider of local

exchange telecommunications services requesting such access and interconnection at non-discriminatory prices, terms, and conditions. If the parties are unable to negotiate mutually acceptable prices, terms, and conditions after 60 days, either party may petition the Commission and the Commission shall have 120 days to make a determination after proceeding as required by s. 364.162(6) pertaining to interconnection services. [Emphasis supplied.]

Section 364.16(3):

Each local exchange telecommunications company shall provide access to, and interconnection with, its telecommunications facilities to any other provider of local exchange telecommunications services requesting such access and interconnection at non-discriminatory prices, rates, terms, and conditions established by the procedures set forth in s. 364.162. [Emphasis supplied.]

Section 364.162(2):

If a negotiated price is not established by August 31, 1995, either party may petition the Commission to establish nondiscriminatory rates, terms, and conditions of interconnection and for the resale of services and facilities. Whether set by negotiation or by the Commission, interconnection and resale prices, rates, terms, and conditions shall be filed with the Commission before their effective date. [Emphasis supplied.]

Section 364.162(6):

An alternative local exchange telecommunications company that did not have an application for certification on file with the Commission on July 1, 1995, shall have 60 days from the date on which it is certificated to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and facilities. If a negotiated price is not established after 60 days, either party may petition the Commission to establish nondiscriminatory rates, terms, and conditions of interconnection and for the resale of services and facilities. The Commission shall have 120 days to make a determination after proceeding as required by subsection (3). [Emphasis supplied.]

In addition, the following general statutory provisions, which are familiar ones to the Commission, also apply in this proceeding:

Section 364.08:

(1) A telecommunications company may not charge, demand, collect or receive for any service rendered or to be rendered any compensation other than the charge applicable to such service as specified in its schedule on file and in effect at that time. A telecommunications company may not refund or remit, directly or indirectly, any portion of the rate or charge so specified or extend to any person any advantage of contract or agreement or the benefit of any rule or regulation or any privilege or facility not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service.

(2) A telecommunications company subject to this chapter may not, directly or indirectly, give any free or reduced service between points within this state. However, it shall be lawful for the Commission to authorize employee concessions if in the public interest. [Emphasis supplied.]

Section 364.09:

A telecommunications company may not, directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect or receive from any person a greater or lesser compensation for any service rendered or to be rendered with respect to communication by telephone or in connection therewith, except as authorized in this chapter, than it charges, demands, collects, or receives from any other person for doing a like and contemporaneous service with respect to communication by telephone under the same or substantially the same circumstances and conditions. [Emphasis supplied.]

Section 364.10(1):

(1) A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [Emphasis supplied.]

The previously quoted interconnection rate provisions of Sections 364.16 and 364.162, Florida Statutes, grant the Commission jurisdiction to set the rates, terms and conditions of local interconnection between LECs and ALECs, upon petition. Furthermore, Commission-approved rates, terms and conditions must be "nondiscriminatory." Interpreting Sections 364.08, 364.09, and 364.10 in the past, the Commission has found that only undue or unreasonable discrimination is prohibited. "Unreasonable discrimination" arises when similarly

situated customers who use the same service and cause substantially the same costs to be incurred pay different prices for the service. See e.g., In re: Petition for Declaratory Statement Concerning Potential Service to Dog Island by St. Joseph Telephone and Telegraph Company, 95 FPSC 3:466,468; In re: Intrastate Telephone Access Charges for Toll Use of Local Exchange Services, 85 FPSC 2:160; In re: Application of Telecom Xpress, Inc. for Authority to Provide Interexchange Telecommunications Service, 88 FPSC 10:470; In re: Investigation Into NTS Cost Recovery Phase II, 88 FPSC 7:44.

The service at issue is the termination of local traffic on BellSouth's network. See e.g., Tr. 366-368. Moreover, local interconnection service is an essential service. Tr. 50, 671. All ALECs need to terminate calls on BellSouth's network in order to compete with each other.

The fundamental question before the Commission is whether MCIMetro and MFS are similarly situated to the ALECs for whom the Commission has previously approved rates for the termination of traffic on BellSouth's network. In Order No. PSC-96-0082-AS-TP, the Commission approved a settlement agreement containing rates for terminating local traffic on BellSouth's network for the certificated ALECs Teleport, Intermedia, Time Warner AxS, Digital Media Partners and Continental. MCIMetro and MFS have asserted that such rates are unacceptable. MCIMetro and MFS failed to demonstrate why the Commission-approved interconnection rates and terms are unreasonable, nor have they presented any competent and substantial evidence that they are not similarly situated to the ALECs who signed the agreement for BellSouth local interconnection service. The record instead reflects that each ALEC company requires the same "essential" local call termination service from BellSouth in order to compete and that BellSouth will incur substantially the same types of costs in terminating the local traffic of each ALEC depending upon whether interconnection is at the end office or tandem. Therefore, the terms of local interconnection approved by the

Commission in Order No. PSC-96-0082-AS-TP should apply to MCIMetro and MFS as a reasonable compromise for purpose of facilitating the introduction of competition in BellSouth territory.

The Order notes differences between the settlement agreement and the Commission's orders in the universal service and number portability dockets. The order questions whether differing regimes on these issues creates the possibility that the Commission would be endorsing discriminatory rates, terms and conditions for competitors. The Commission must not overlook the fact that the interim universal service mechanism provisions of s. 364.025 and the temporary number portability provisions of s. 364.16 grant the Commission significant discretion in establishing the interim and temporary mechanisms. Noticeably absent from these sections, especially with regard to temporary number portability, is any specific statutory directive that these rates, terms and conditions must be "nondiscriminatory." In contrast, non-discriminatory terms are mandated at least four times in the local interconnection sections. The Commission must be particularly careful in this proceeding to ensure that similarly situated ALECs, who all require local call termination service from BellSouth receive the service at nondiscriminatory rates, terms and conditions.

B. Promote Competition and Choice.

The constant thread running throughout Chapter 364 is that competition is in the public interest and must be promoted. To that end, the Commission is directed to exercise its exclusive jurisdiction to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services. Section 364.01(4)(b), Fla. Stat. The Commission has also been given appropriate regulatory oversight to ensure

that all providers are treated fairly by preventing anticompetitive results. Section 364.01(4)(g), Fla. Stat.

In order to promote competition, the Commission should ensure that the BellSouth rates for local call termination arrangements are "fair (i.e. non-discriminatory as previously discussed), just, and reasonable" as applied to each ALEC in a competitive environment. While BellSouth is no longer operating under rate of return regulation, these basic principles can be applied in furtherance of a competitive environment. As discussed above, a Commission-approved interconnection rate is not "fair" if it unreasonably discriminates among similarly situated ALEC providers for like service. It is not "just" if it picks the winners and the losers in the marketplace. It is not "reasonable" unless the Commission ensures that the providers are able to cover the cost of furnishing interconnection pursuant to Section 364.162(4), Florida Statutes.

The Commission has approved a rate for BellSouth call termination. If the Commission now approves more or less favorable rates for the same service when provided to MCIMetro and MFS, the Commission will be "hand-picking" the winners and the losers in the marketplace. All the ALECs that are parties to this proceeding are going to be competing against each other. The Commission must avoid setting "unfair" rates, terms and conditions that make it more or less likely that MFS will compete more effectively than Teleport. Rather, all ALECs should be placed on equal competitive footing.

Finally, the Commission should ensure that the rate is "reasonable." The Commission-approved rates and terms contained in the comprehensive BellSouth agreement represent a reasonable compromise for the purpose of facilitating the introduction of local competition in BellSouth's territory. MFS argues that it cannot compete under the BellSouth switched access charge proposal. That proposal is different from the terms and conditions of the Stipulation

and Agreement which contain mutual and reciprocal compensation according to BellSouth's switched access rate elements. Three simple examples illustrate the charges contained in the Stipulation and Agreement. These examples are extrapolated from Attachment A of the agreement. (Rate differences will occur where mileage and applicable functional elements, i.e. tandem collocation, differ).

Example 1

Teleport terminates 100,000 minutes for BellSouth
BellSouth terminates 100,000 minutes for Teleport

Rate: \$.01052/minute

Teleport will bill BellSouth \$1052 (100,000 min. x \$.01052)
BellSouth will bill Teleport \$1052 (100,000 min. x \$.01052)

Example 2

Teleport terminates 100,000 minutes for BellSouth
BellSouth terminates 125,000 minutes for Teleport

Rate: \$.01052/minute

Traffic is out of balance by more than 5% but Teleport only pays for 5% of BellSouth's terminating minutes on Teleport's network.

Teleport will bill BellSouth \$1052 (100,000 minutes x \$.01052)
BellSouth will bill Teleport \$1105 (100,000 minutes x 1.05 cap x \$.01052)

Example 3

Teleport terminates 216,000 minutes for BellSouth
BellSouth terminates 100,000 minutes for Teleport

Rate: \$.01052

Traffic is out of balance by more than 5% but BellSouth only pays for 5% of Teleport's terminating minutes on BellSouth's network.

Teleport will bill BellSouth \$1105 (100,000 minutes x 1.05 cap x \$.01052)
BellSouth will bill Teleport \$1052 (100,000 minutes x \$.01052)

C. Encourage Negotiation and Compromise.

No one can dispute that Chapter 364 encourages LECs and ALECs to negotiate mutually acceptable prices, terms and conditions before petitioning the Commission to resolve disputes. Consistent with that intent, it is appropriate for the Commission in overseeing the development of competition to also encourage negotiated settlements. When parties enter into settlements, they do so to save time, expense, and inevitable risk of litigation. Naturally, the BellSouth Stipulation and Agreement embodies a compromise in exchange as each party has given something up that they might have won had they proceeded with the litigation.

The Commission has considered and approved the December 11, 1995 BellSouth Stipulation and Agreement. If the Commission now approves discriminatory rates, terms and conditions for BellSouth local interconnection service offered to other ALECs, the negotiation process would, as a practical matter, be eliminated as an effective tool, despite clear legislative intent that it be preserved. Parties would no longer have any incentive to consent to judgement and this statutory element of promoting compromise would be destroyed.

Based upon the foregoing three principles, the Commission must act consistent with its approval of the December 11, 1995 BellSouth Stipulation and Agreement. FCTA does not request that the Commission do so unquestioningly. Rather, the evidence of record demonstrates that MCIMetro and MFS are similarly situated to the ALECs that signed the BellSouth Stipulation and Agreement. BellSouth must terminate all of the ALECs' local calls on its network in order for the ALECs to compete and will incur substantially the same costs in doing so for each ALEC. This provides an initial two-year arrangement ensuring that all ALECs are on equal footing while introducing competition into the marketplace.

ISSUE 2: If the Commission sets rates, terms and conditions for interconnection between the ALECs and BellSouth, should BellSouth tariff the interconnection rates(s) or other arrangements?

***POSITION:** Yes.*

DISCUSSION: The parties are in general agreement that BellSouth should tariff the interconnection rate(s) or other arrangements.

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

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

DISCUSSION: The agreement generally requires BellSouth to provide intermediary tandem switching and transport to connect an ALEC's end user to the end user of another ALEC, a LEC other than BellSouth, or wireless telecommunications service providers, for the purpose of making local and toll calls.

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

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

DISCUSSION: The agreement generally requires BellSouth to compensate an ALEC for the origination of 800 traffic terminated to BellSouth pursuant to the ALEC's originating switched access charges. The ALEC will provide to BellSouth the appropriate records necessary for BellSouth to bill its customers. At such time as the ALEC elects to provide 800 services, the ALEC reciprocates this arrangement.

ISSUE 5: (a) **What are the appropriate technical arrangements for the interconnection of ALECs' networks to BellSouth's 911 provisioning networks such that ALECs' customers are ensured the same level of 911 service as they would receive as a customer of BellSouth?**

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

DISCUSSION: The agreement ensures that an ALEC's customers have the same level of access to reliable 911 service as the LEC providers. For basic 911 service, BellSouth should provide a list consisting of each municipality in Florida that subscribes to Basic 911 service. The list will also provide E911 conversion date and, for network routing purposes, a ten-digit directory number representing the appropriate emergency answering position for each municipality subscribing to Basic 911 service. Each ALEC should arrange to accept 911 calls from its customers in municipalities that subscribe to Basic 911 service and translate the 911 call to the appropriate 10-digit directory number as stated on the list provided by BellSouth and route the call to BellSouth at the appropriate tandem or end office. When a municipality converts to E911 service, the ALEC should be required to discontinue the Basic 911 procedures and begin the E911 procedures.

For E911 service, the agreement provides that the ALEC should connect Feature Group D trunks to the appropriate E911 tandem, including the designated secondary tandem. If a municipality has converted to E911 service, the ALEC should forward 911 calls to the appropriate 911 primary tandem, along with ANI, based upon the current E911 end office to tandem homing arrangement as provided by BellSouth. If the primary tandem trunks are not available, the ALEC should alternate route the call to the designated secondary E911 tandem. If the secondary tandem trunks are not available, the ALEC should alternate route the call to the appropriate Traffic Operator Position System (TOPS) tandem.

(b) What procedures should be in place for the timely exchange and updating of the ALECs' customer information for inclusion in appropriate E911 databases?

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

DISCUSSION: The agreement provides that in order to ensure the proper working of the system along with accurate customer data, the ALEC should provide daily updates to the E911 database. BellSouth must work cooperatively with the ALEC to define record layouts, media requirements, and procedures for this process.

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

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

DISCUSSION: The agreement requires BellSouth and an ALEC to mutually provide each other busy line verification and emergency interrupt services. BellSouth's services should be tariffed.

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

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

DISCUSSION: The agreement requires BellSouth to include an ALEC's customers' primary listings (residence and business listings) and yellow page (business) listings in its directory assistance database at no charge.

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

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

DISCUSSION: The agreement requires BellSouth to include an ALEC's 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 ALEC 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 ALECs and BellSouth, including billing and clearing credit card, collect, third party and audiotext calls?

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

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

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

DISCUSSION: The agreement requires that BellSouth and the ALEC provide LEC-to-LEC Common Channel Signalling (CCS) to one another, where available, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions. All CCS signalling parameters should be provided including Automatic Number Identification (ANI), Originating Line Information (OLI) calling party category, charge number, etc. All privacy indicators should be honored. BellSouth and the ALEC should cooperate on the exchange of Transactional Capabilities Application Point (TCAP) messages to facilitate full interoperability of CCS-based features between their networks. CCS should be provided Signal Transfer Point to Signal Transfer Point.

ISSUE 11: What are the appropriate arrangements for physical interconnection between the ALECs and Sprint-United/Centel, including trunking and signalling arrangements?

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

DISCUSSION: The physical interconnection arrangements and procedures contained in the Stipulation are appropriate, and FCTA 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 ALECs?

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

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

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

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

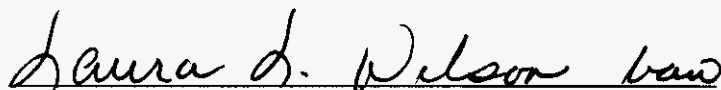
DISCUSSION: The procedures for resolving operational issues as they arise contained in the Stipulation are appropriate, and FCTA urges the Commission to adopt them in resolution of this issue.

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

***POSITION:** The terms and conditions of the December 11, 1995 Stipulation and Agreement should apply.*

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

RESPECTFULLY SUBMITTED this 25th day of January, 1996.



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CERTIFICATE OF SERVICE
DOCKET NO 950985-TP

I **HEREBY CERTIFY** that a true and correct copy of the foregoing been furnished by Hand Delivery(*) and/or U. S. Mail on this 25th day of January, 1996 to the following parties of record:

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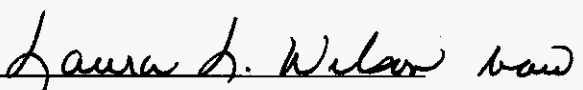
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