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Continental Cablevision - Southeastern Region

DONALD L. CROSBY
Regulatory Counsel

**ORIGINAL
FILE COPY**

January 25, 1996

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: DOCKET NO. 950985-TP

Dear Ms. Bayo:

Enclosed for filing on behalf of Continental Cablevision, Inc. in the above-referenced docket are an original and fifteen copies of the Rebuttal Testimony of A.R. ("Dick") Schleiden dated January 26, 1996. Copies of the testimony have been served on the parties of record pursuant to the attached certificate of service.

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

Thank you for your assistance with this filing.

Sincerely,

Donald L. Crosby

- ACK
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Enclosure

cc: All Parties of Record

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1 **REBUTTAL TESTIMONY OF A.R. (DICK) SCHLEIDEN**
2 **ON BEHALF OF CONTINENTAL CABLEVISION, INC.**
3 **DOCKET NO. 950985-TP**
4 **JANUARY 26, 1996**
5

6 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS AND**
7 **IDENTIFY THE PARTY ON WHOSE BEHALF YOU ARE TESTIFYING.**

8 A. A.R. (Dick) Schleiden, Continental Fiber Technologies, Inc. doing/business/as
9 AlterNet, 4455 Baymeadows Road, Jacksonville, Florida. Continental Fiber
10 Technologies, Inc. and Continental Florida Telecommunications, Inc. are wholly-
11 owned subsidiaries of Continental Telecommunications Corporation, which is a
12 wholly-owned subsidiary of Continental Cablevision, Inc. I am testifying on
13 behalf of Continental Cablevision, Inc., and its affiliated companies operating in
14 Florida.

15 **Q. WHAT IS YOUR POSITION WITH ALTERNET?**

16 A. I am the General Manager of AlterNet, which was originally certified as an
17 alternative access vendor and is currently certified as an alternative local exchange
18 telecommunications company.

19 **Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY IN THIS**
20 **PROCEEDING?**

21 A. Yes. I submitted direct testimony in this proceeding.

22 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

23 A. I will examine and rebut the testimony of the witness for Sprint-United/Centel,
24 Mr. F. Ben Poag.

1 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

2 A. I take issue with some areas of Mr. Poag's testimony.

3 First, his testimony makes reference to the Stipulation and Agreement entered
4 into by Continental and Sprint-United/Centel, as well as various other parties to
5 this proceeding, and approved by the Commission. I believe it is improper to
6 introduce that stipulation into this proceeding for several reasons. I do not
7 believe that Continental's agreeing to resolve an issue relating to Sprint-
8 United/Centel in a particular manner compels Continental to agree to resolve that
9 issue relating to Sprint-United/Centel in the identical manner. Nor do I believe
10 that the Commission's approval of the Stipulation requires it to establish the
11 Continental/Sprint-United/Centel solution in resolution of that issue between
12 Continental and Sprint-United/Centel. The fact remains that Continental has not
13 reached agreement with Sprint-United/Centel on the issues that separate our
14 companies. Thus, the Commission should disregard all references in Mr. Poag's
15 testimony to the Stipulation.

16 Mr. Poag's attempt to use the Stipulation as evidence of Continental's views on
17 the proper interconnection arrangement that the Commission should establish for
18 Sprint-United/Centel illustrates why his testimony concerned the Stipulation
19 deserves to be disregarded. The Stipulation was a comprehensive solution of
20 various matters. Mr. Poag takes one matter, interconnection compensation, out
21 of the context of the Stipulation and points to it as evidence of Continental's
22 beliefs. It is not Continental's opinion that interconnection compensation will not

1 have anti-competitive effects in some cases. Mr. Poag's testimony on this subject
2 leads to a misconception regarding Continental's true beliefs because the matter
3 is taken out of context. This furnishes an independent reason for the
4 Commission to disregard Mr. Poag's testimony about the Stipulation.
5 Secondly, Mr. Poag's testimony incorrectly asserts that the "Bill and Keep"
6 arrangement that I have recommended to the Commission for adoption in this
7 proceeding fails to provide compensation to cover Sprint-United/Centel's costs of
8 furnishing interconnection. For the reasons set out below, I believe that the "Bill
9 and Keep" arrangement does provide compensation to the extent that any such
10 additional costs are incurred. His testimony alleges additional defectives with
11 this arrangement which I will also address.

12 **Q. DOES THE "BILL AND KEEP" ARRANGEMENT COVER ANY**
13 **ADDITIONAL COSTS OF INTERCONNECTION INCURRED BY**
14 **SPRINT-UNITED/CENTEL?**

15 **A.** Yes. There should be general agreement that the Florida Legislature intends to
16 benefit consumers by keeping as low as possible the costs of providing them
17 telecommunications services. It defies logic to argue that the recent legislation
18 ties the hands of the Commission, forcing it to establish an interconnection
19 arrangement that will, in and of itself, drive up the costs of providing such
20 services. I do not believe that was intended; indeed, I believe this legislation
21 directs the Commission to seek an arrangement, such as "Bill and Keep," which
22 keeps costs down.

1 I do not concede that there will be additional costs of interconnection.
2 Nevertheless, in my view, Continental should seek to recover all of its costs from
3 its customers while Sprint-United/Centel recovers all of its costs from its own
4 customers. This is appropriate because the Sprint-United/Centel customers will
5 benefit from contacting the Continental customers and vice versa. It is possible
6 that from the very onset of competition, the traffic flowing between both sets of
7 customers will be in balance. In such an event, no compensation arrangement
8 calling for the companies to swap funds makes sense.
9 However, even if traffic is unbalanced for an initial period, Sprint-United/Centel
10 should incur, at most, only a negligible amount of cost in interconnecting traffic
11 with Continental. Further, all costs incurred by Sprint-United/Centel will be
12 falling as customers migrate to Continental, and all of Continental's costs will be
13 rising as its customer base increases. This demonstrates the reciprocal nature of
14 cost changes to be expected as we move from a monopoly to a competitive
15 environment.

16 **Q. SHOULD INTERCONNECTION BE PRICED TO COVER THE COSTS**
17 **OF PROVIDING UNIVERSAL SERVICE AND CARRIER-OF-LAST-**
18 **RESORT OBLIGATIONS?**

19 A. No. Interconnection should be priced strictly in accordance with the Legislature's
20 directives in the New Legislation. In a different proceeding, the Commission has
21 carried out its statutory mandate to protect universal service. There is no reason
22 for Sprint-United/Centel to attempt, in this proceeding, to obtain compensation for

1 interconnection that would include contributions toward covering the costs of
2 providing universal service and carrier-of-last-resort obligations. The Legislature
3 obviously feared that these subjects could become confused if considered in the
4 same proceeding and if similar methodology were employed, possibly leading to
5 more support being provided for universal service than needed. As a result, the
6 New Legislation carefully separates the subjects of interconnection, resale,
7 universal service and number portability separate and keeps them independent of
8 each other.

9 The Legislature intended for the Commission to hold different proceedings for
10 interconnection and universal service, each with its own set of pricing directions,
11 to implement the New Legislation. The Commission has complied with this
12 requirement, holding a separate universal service proceeding and establishing a
13 procedure for use by any incumbent LEC that needs universal service support..

14 This separate treatment of universal service and interconnection by the Legislature
15 recognizes the "sea change" in the Commission's regulatory techniques that is
16 accomplished by the New Legislation. Whereas the Commission traditionally
17 employed ratesetting methods that include contributions in support of universal
18 service, the New Legislature replaces this regulatory methodology with bifurcated
19 treatment. In supporting the addition of contribution to the interconnection rate,
20 Mr. Poag's testimony harkens back to this out-moded methodology which the
21 Florida Legislature has replaced with price regulation.

1 I believe that, in its white paper entitled "Essential Elements of Local Telephone
2 Competition," a copy of which is attached as Exhibit CONT-3, Sprint-
3 United/Centel addresses best the legislative concern underlying this treatment.
4 On page 2, Sprint-United/Centel states that interconnection compensation should
5 not be a source of universal service subsidy and "should not be designed to
6 produce contribution, subsidies, or universal service support;". It is perplexing to
7 me that Mr. Poag testifies otherwise. At page 10, lines 14 through 20, of his
8 testimony, he states that contribution is an appropriate element of a local
9 interconnection rate, implying that such a subsidy is proper.
10 The Legislature had a compelling reason of historical significance to follow this
11 course. The Commission, the incumbent LECs and the IXC's recognized years
12 ago a need to recover the costs for specific elements of various
13 telecommunications services by tariffing their rates, terms and conditions
14 individually, such as Directory Assistance. In my view, the majority of the
15 participants in the Public Switched Network should now have the opportunity to
16 freely structure their rates in accordance with their value to end users. This
17 freedom should also be extended to the incumbent LECs as soon as the
18 Commission detects that their current dominant monopoly market power has been
19 met with effective competition and they no longer are the local loop "bottleneck."
20 **Q. Must the Commission set rates for interconnection that are usage based and**
21 **that depend on measuring and recording the calls exchanged by Continental**
22 **and Sprint-United/Centel?**

1 A. No. I note that Mr. Poag suggests an alternative to such usage-based pricing, the
2 proposed "port" charge, and I agree that such an alternative offers the possibility
3 of avoiding the problems associated with measuring and recording calls and
4 engaging in contentious billing procedures that do not justify the time and money
5 expended. I will address the "port" charge proposal later. Turning first to Mr.
6 Poag's proposal that rates for interconnection be priced on a measured and
7 recorded usage basis, including the notion that some charge be established for the
8 exchange of any unbalanced amount of traffic, I do not believe that this is
9 supportable for several reasons. First, measured service leaves the opportunity for
10 marketing incentives that may not be in the best interest of consumers and of the
11 local exchange telecommunications companies, both alternative and incumbent,
12 alike. It certainly does not appear to me to that such pricing would stimulate the
13 kind of competitive activity that the Legislature envisioned in rewriting the law
14 governing the regulation of telecommunications.

15 Second, other witnesses have submitted testimony in this proceeding alleging that
16 the incumbent LECs lack the capability of measuring and recording terminating
17 traffic in all of their Class 5 central offices, and I believe this to be the case. This
18 being the case, it raises a host of technological issues that would likely delay
19 choice in local service for many citizens of Florida.

20 Third, to diminish the cost of furnishing universal service to the public, cost must
21 be driven out of the business. The development and installation of systems to

1 process this terminating traffic data would drive up cost; thereby increasing prices
2 to consumers and absolutely moving this industry in the wrong direction.

3 Fourth, any interconnection procedure relying upon measured service ultimately
4 dictates that competition must look like the "traditional" monopoly. My
5 recommendation is that the Commission establish interconnection arrangements
6 that will force both incumbents and new entrants to look instead for innovative
7 "new" competitive services that meet consumers needs. ALECs must be free to
8 attract customers through offering services that meet customers' needs and not
9 bound to "traditional" monopoly restrictions on service offerings.

10 Fifth, pricing interconnection strictly under a measured usage methodology flies
11 in the face of the Legislature's clear mandate, found at Section 364.337(2), Florida
12 Statutes (1995), that ALECs offer their end users a flat-rated pricing option for
13 basic local service and not impose mandatory measured service.

14 Sixth, interconnection rates that rely on measuring and recording usage will lead
15 to many confrontational issues between the parties. The Commission will have to
16 be called upon to preside over the resolution of such issues that occur. There is
17 ample opportunity for abundant disagreement between the parties if the times
18 recorded by all parties for traffic do not begin and end at precisely the same
19 moments. I am led to wonder at the number and intensity of argumentative
20 discussions that would evolve out of a single, faulty measuring and recording
21 device.

1 For the above reasons, I have concluded that interconnection through reciprocal,
2 mutual exchange of both local and toll traffic, at the proper levels, is the manner
3 that will give Florida citizens the lowest possible telecommunications cost with
4 the highest degree of flexibility and feature-rich innovation obtainable anywhere
5 in the world. A "Bill and Keep" arrangement, which has gained the acceptance of
6 regulatory agencies in Connecticut and California, is the logical choice for
7 Florida.

8 Turning back to Mr. Poag's "port" charge proposal, I believe that such a flat-rated
9 charge may alleviate some of the problems identified above in connection with the
10 usage-based compensation arrangement. Continental has given Sprint-
11 United/Centel's "port" charge proposal serious consideration; however, I agree
12 with Time-Warner's witness, Mr. Engleman, that the level of the charge proposed
13 by Sprint-United/Centel is highly excessive. Set at a vastly lower level, the "port"
14 charge compensation arrangement may be entirely acceptable to Continental.

15 **Q. Do technical restrictions on interconnection exist that might favor one of the**
16 **parties under a "Bill and Keep" arrangement?**

17 A. In the event that a specific grade of service is either agreed to by the parties or
18 ordered by the Commission, the answer is definitely "NO."

19 **Q. Does that conclude your testimony?**

20 A. Yes.

ESSENTIAL ELEMENTS OF LOCAL TELEPHONE COMPETITION

1. FRANCHISES AND ENTRY REQUIREMENTS

Federal, state or local restrictions that limit or prohibit competitors from offering a full range of local telephone services and regulatory requirements that unreasonably restrict market entry must be abolished. Specifically:

No Exclusive Franchises -- No firm should have an exclusive franchise, license or certificate to provide local telephone service.

No Need to Prove Existing Services are Inadequate -- No new market entrant should have to prove that the incumbent's service is inadequate as a prerequisite to offer competing local telephone service.

No Discrimination Against New Market Entrants -- No laws or regulations should impose more onerous requirements on new market entrants than apply to incumbent telephone companies or discriminate against new market entrants. However, that does not mean that new market entrants should be subject to the same regulatory requirements as the incumbent local telephone company (see below).

Equal Access to Rights of Way -- Any exclusive or preferential treatment of pole, conduit and rights-of-way of the incumbent local telephone company must be eliminated so that new entrants have access to those rights of way on the same rates, terms and conditions as the incumbent.

No Unreasonable Requirements for Market Entry -- Entry into a local telephone market should not be artificially restricted by unreasonable requirements imposed on new market entrants (e.g., requirements to offer facilities-based service to 100% of a given geographic area, excessive performance bonds, extended certification processes).

Quid Pro Quos should not be a Condition of Market Entry -- Entry into a local telephone market should not be contingent on actions of the incumbent local telephone company or unreasonably delayed by lengthy, cumbersome regulatory proceedings concerned with ill-defined, open-ended issues (e.g., no local competition authorized until and unless the incumbent local telephone company realigns its current rates, or no local competition until and unless a comprehensive universal service protection/subsidy replacement plan has been developed, debated and adopted by regulators).

2. INTERCONNECTION & COMPENSATION

Interconnection of local telephone networks at reasonable rates is critical to local telephone competition. Competing networks should be interconnected so that customers can seamlessly receive calls that originate on another carrier's network and place calls that terminate on another carrier's network without dialing extra digits, paying extra, or doing anything out of the ordinary. New market entrants should be interconnected with incumbent providers in a manner that gives them seamless integration into and use of local telephone company signalling and interoffice networks in a manner equivalent to that of the incumbent local telephone company.

Reasonable Compensation for Call Termination – Mutual compensation for call termination should be set at a level that encourages the development of competition and interconnection while covering the associated costs. Compensation should:

Be economically viable – not set at a level that makes provision of competing local service uneconomic (e.g., set at a level greater than the market price of local service);

Be administratively efficient and minimize carrier conflicts – structures that are simple and easy to verify (e.g., flat rate charges);

Create incentives for competitive infrastructure development – reward greater investment in infrastructure development by local telephone company competitors;

Minimize competitive distortions – not discourage entry into all segments of the market;

Not be a source of universal service subsidy – should not be designed to produce contribution, subsidies, or universal service support;

Promote competitive innovation – not tied to existing local telephone company price structures so as to force new market entrants to mimic existing pricing structures; and,

Not mirror existing access charges levels – compensation based on current access charges will be uneconomic.

Uniform Standards and Administrative Interconnection – Basic network functions must be provided in a nationally uniform manner, and conform to quality and interoperability standards. The incumbent must cooperate in ordering, billing, circuit provisioning, maintenance and repair.

Service Unbundling – The incumbent local telephone company's services should reflect an unbundling of service components so that a new market entrant is not forced to purchase services that it does not want in order to obtain essential telecommunications capabilities. Unbundling should be performed in response to a *bona fide* request.

Collocation – Collocation of facilities to achieve interconnection should reflect two characteristics:

Collocation at aggregation points – collocation should be made at the local telephone company's primary aggregation points (e.g., tandems, central offices, serving wire centers); and,

Physical or virtual – collocation can either be physical collocation or virtual collocation that is economically and technically equivalent to physical collocation from the perspective of the interconnector.

3. NUMBERING RESOURCE ISSUES

Non-discriminatory access to numbering resources is critical. The following numbering resource issues are critical:

Access to Telephone Numbers -- New entrants should have non-discriminatory access to sufficient blocks of telephone numbers (*i.e.*, access to NXXs) to offer service.

Number Portability -- Customers must be able to change service providers and retain the same local telephone number at the same location (service provider number portability) without having to dial extra digits or be burdened by "special" actions in order to achieve number portability. Interim number portability mechanisms, such as remote call forwarding, are an inferior form of number portability that impairs a new market entrant's service, and such impairment should be reflected in interconnection charges.

Access to and Inclusion in DA, LIDB, AIN, 800 and Other Databases and Telephone Directories -- Competitive local service providers should be allowed to have their customers' telephone numbers included in telephone directories, directory assistance, LIDB, AIN, 800 and other databases and have access to such resources equal in price, functionality and quality as do incumbent local telephone providers.

Access to 911, TRS and Local Operator Services -- Competitive local service providers should have access to 911, relay services and operator services provided by the incumbent local telephone company on the same terms and conditions as enjoyed by the incumbent local telephone company.

Number Administration -- Numbering policy must be broadly developed and administered in a competitively neutral manner. The local exchange carrier must not be able to control the administration and assignment of numbering resources. NPA assignments must be handled in a neutral and non-discriminatory manner.

4. UNIVERSAL SERVICE SUPPORT & EMBEDDED SUBSIDIES

Competition and Universal Service. Local service competition enhances universal service. Competition for access services and competition in the local service market may well stimulate the development of new products, stimulate demand and produce higher revenues and earnings for the incumbent local telephone company just as competition in the interLATA long distance market did for AT&T.

Embedded Subsidies Should be Transitioned Away. In order to encourage efficient competition in all market segments, it is important to eliminate uneconomic/non-competitive subsidies embedded in telecommunications pricing structures over a reasonable transition period (e.g., reduce access charges that are priced substantially above costs and raise those rates that are substantially below costs.)

Explicit Subsidies. Subsidies to preserve universal service should have the following characteristics:

Explicitly Identified. If subsidies are required, they should be explicitly identified rather than embedded in various prices;

Needs Based Targeting. If subsidies are required, they should be needs based either on a showing of low income by consumers or based on service to high cost areas;

Broad-Based Support. If subsidies are required, all telecommunications service providers should contribute to such subsidies in a competitively neutral manner based on their telecommunications revenues net of payments to intermediaries;

Neutral Administration. Collection and distribution of subsidies should be done by a neutral administrator;

Only Basic Residential Telephone Service Subsidized. Only basic residential telephone services should be subsidized, limited to (1) single party local service, (2) access to touch tone dialing, (3) access to carriers of choice, (4) access to operator services; and, (5) access to emergency (911) services.

Competitive Access to Subsidies. If subsidies are required, then all competitive local telephone service providers should have the opportunity to receive such subsidies when selected by an eligible customer.

5. REGULATION OF INCUMBENTS AND NEW MARKET ENTRANTS

Differential Regulation of Incumbents and New Market Entrants. As long as there is not parity in the marketplace, there should not be parity in regulation. Regulation of local telephone providers should be a function of market power as well as the incumbent telephone company's ability to leverage its control of essential facilities. As long as the Incumbent local telephone provider possesses substantially more market power than new market entrants, it is appropriate to subject the incumbent to greater regulatory oversight.

Elimination of Rate Base Regulation. Traditional rate-base regulation should be abandoned and replaced with appropriately designed price and service regulation to provide the appropriate incentives as competition emerges. Traditional rate-base, rate of return regulation creates a regulatory predisposition to avoid actions that could affect the incumbent's revenues/earnings (e.g., rules that prohibit competitive entry into local telephone markets) and seek out mechanisms to ensure revenue neutrality for the incumbent (e.g., "make whole" compensation mechanisms in IntraLATA toll markets to recover competitive revenue losses). Traditional rate-base regulation also contributes to uneconomic infrastructure investment incentives and discourages efficient pricing and cost reductions. Instead, appropriately styled price and service regulation, with pricing rules to transition rates to more efficient levels, enables local telephone companies to respond to emerging competition, and prevents cross-subsidization and abuse of market power.

Imputation In determining the price floor for their competitive services, incumbent local telephone companies should impute in the aggregate the same charges for essential network services and functionality as are paid by their competitors to them for the same services and functionality plus the costs of other services and functionalities actually used by the incumbent telephone company.

Resale & Sharing. Telecommunications services and functions should be provided without any restrictions on resale and sharing, provided that resale is of the same class of service (e.g., should not be able to repackage and resell local residential services as business services).

Provider of Last Resort In a competitive market, there is no provider of last resort, only competitors, all seeking to provide services to customers. Because incumbent local telephone companies typically have universal coverage, even though competitors are entering the market, regulators should continue to restrict incumbent telephone companies from exiting markets or market segments until competitive alternatives become available (i.e., being the carrier of last resort). However, restrictions on market exit should diminish as competition develops.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Rebuttal Testimony of A. R. (Dick) Schleiden were furnished by next-day express delivery on this 25th day of January, 1996, to the following:

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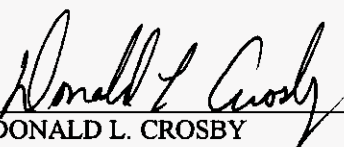
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